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ABSTRACT

This monograph details, in question-and-answer format, the rights of students and the responsibilities of guidance counselors under federal and Colorado state law. Prominent topics include: Confidentiality of student records, freedom of information, the boundaries separating the rights of students, the rights of parents, and the rights of school authorities, nondiscrimination legislation, due process, and the legal ramifications of various kinds of counseling (drug, medical, sexual, moral, etc.). The code of ethics of the American School Counselors Association appears in an appendix. (MPB)

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LEGAL ASPECTS OF GUIDANCE AND COUNSELING IN COLORADO

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Prepared for the Colorado Department of Education
Calvin M. Frazier, Commissioner of Education
Denver 1976

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Dear Colleague:

With increased concern over protecting students' rights in public schools, counselors asked for guidelines to assist them in working with youngsters.

This monograph was developed as a result of this request and is in no way intended as a book of law, but rather to provide direction in response to questions most frequently asked. The Department of Education hopes it will be helpful to you.

Sincerely,

Calvin M. Frazier
Commissioner of Education

Dear Colleagues:

This handbook of guidelines to the legal aspects of counseling has been an outgrowth of a need expressed by counselors across Colorado. Dr. Chester Nolte, a recognized expert on school law, agreed to write this monograph in response to this concern. The State Guidance Liaison Committee identified many of the questions you find in this publication. The Guidance Advisory Council examined and supported this undertaking.

Their time and efforts are greatly appreciated.

Sincerely,

Spot Holmes
Consultant in Guidance Services

Children have more need of models than of critics.

-Joseph Joubert Pensees *(1810)*

TABLE OF CONTENTS

Purpose of the Monograph 1

Types of Legal Problems Faced by Counselors 2

Seeking Legal Assistance 7

Acting *in Loco Parentis* 7

Confidentiality and the Counselor 8

Privileged Communications and the Counselor 11

Open Records 13

Philosophy of Counseling 18

The Bill of Rights and the Counselor 19

Civil Rights Act of 1871 24

Student Discipline and Control 25

The Children's Code 29

Relationships With Parents 32

Counseling Minors 34

Crime Investigation in the Schools 37

Grouping and Testing Children 39

Child Abuse and Neglect 42

Required Consent 44

Title IX and the Counselor 47

APPENDICES

APPENDIX A CODE OF ETHICS OF THE ASCA 49

APPENDIX B DUE PROCESS STANDARDS FOR IDENTIFICATION, EVALUATION AND PLACEMENT OF CHILDREN 53

APPENDIX C SERVICE ORGANIZATIONS HELPFUL TO COUNSELORS 55

APPENDIX D TABLE OF CASES 59

APPENDIX E EASY REFERENCE INDEX 61

APPENDIX F STUDENT GRIEVANCE FORM 65

Purpose of the Monograph

Q. WHAT IS THE PURPOSE OF THIS MONOGRAPH?

A. This publication is designed to provide legal guidelines to assist Colorado school counselors in meeting their work responsibilities in an adequate manner.

Q. WHY IS THERE A NEED FOR A PUBLICATION OF THIS KIND?

A. There are several reasons why a guide to the legal rights and responsibilities of guidance counselors is important at this time.

1. Both students and teachers have won important civil rights via the civil rights movement; these rights are only now being recognized, codified and included in the operational techniques of counselors.
2. A rising tide of litigation could take the counselor into court on real or imagined charges relating to the counseling function.
3. Counselors, like other school personnel, may be held personally liable for their wrongful acts if those acts taken under color of state action deprive someone of his/her civil rights.
4. The area of counseling has never been fully developed in terms of the legal rights and responsibilities of guidance counselors.

Q. WILL THIS PUBLICATION ALLEVIATE THE NEED FOR AN ATTORNEY?

A. By no means. This handbook is designed merely to acquaint you, the counselor, with the general principles of law related to your work, your legal status, and your relationships with students and other teaching/administrative personnel. One should always keep on hand the telephone number of a competent attorney familiar with school law in cases where potential litigation might arise.

Q. WHAT HAVE BEEN THE MAJOR TRENDS AFFECTING THE LAW SINCE 1954?

A. No other influence has been so directional and so pervasive as the civil rights movement, particularly in educational law. A line of cases from the U.S. Supreme Court shows the direction: "Separate but equal facilities (for the races) are inherently unequal." *Brown*

1954. "Expulsion of college students for exercising a constitutional right (to sit-in) denies equal protection of the laws." *Dixon v. Alabama*, 1961. "In religion, the State is firmly committed to a position of neutrality." *Engel* 1962. "Teachers in the public schools have the right to express themselves publicly on matters of public concern." *Pickering* 1968. "Due process of law is not for adults alone." *Gault* 1967. "Children are persons under our Constitution. They do not shed their constitutional rights at the schoolhouse gate." *Tinker* 1969. "The right to attend school is a property right protected under the Fourteenth Amendment." *Goss v. Lopez*, 1975. Since the civil rights movement has apparently not run its course, it would seem reasonable to predict that its tenets (individual freedom, less governmental control) will continue.

Q. IN THE UNITED STATES, WHAT IS MEANT BY "THE LAW"?

A. The term is used in this country as a generic name for all forms of legislation, statutes, public acts of the Congress, court decisions, opinions of attorneys general, and even to the rulings of administrative bodies, such as the State Board of Education. In a federal system of government such as ours, many levels of "the law" are operative at the same time. It seems safe to divide the sources of the law into 3 parts: 1) the written law, which includes constitutions, legislative acts, and Acts of the Congress; 2) the unwritten law, such as court decisions (often called the "common law"); and 3) rulings of administrative departments of government, such as the attorney general's office and the civil rights commission, to name two examples. The thing to remember about the law is that it is founded on the Constitution of the United States, and that takes precedent over all other forms of law wherever it may be found.

Types of Legal Problems Faced by Counselors

Q. WHAT AREAS OF PRIVILEGED COMMUNICATIONS ARE SENSITIVE TO THE COUNSELOR BECAUSE OF POSSIBLE LEGAL ACTIONS?

A. A legal problem arises when letters of recommendation are written by the counselor to a college admissions board or officer. Any communication which may tend to lower the student in the esteem of his fellows or of third parties, or any which may tend to libel or to slander the student are sensitive areas which need to be approached with caution by the counselor. One piece of good advice is

to put down only factual statements, not opinions; the former can be supported, while the latter may be ambiguous at best, and lead to a denial of someone's civil rights for which the counselor, despite a qualified privilege, may be held accountable in damages. See, for example, *Wood v. Strickland,* 95 S. Ct. 992 (Ark. 1975) in which the Supreme Court held that school officials may be held personally liable for damages where they deprive students of their civil rights without due process of law.

Q. WHAT IS MEANT BY "CLUSTERS" OF LEGAL PROBLEMS?

A. In any relationship between people, certain relationships arise because of the roles which people play in these relationships. For example, teachers and counselors stand *in loco parentis* (in place of the parent) wherever the counselor-student relationship is at issue. Thus, the *in loco parentis* relationship with its concomitant legal problems might be considered a "cluster" of legal problems around which certain legal principles might be examined, and predictions made.

Q. WHAT CLUSTERS OF LEGAL PROBLEMS ARE ESPECIALLY TROUBLESOME TO SCHOOL COUNSELORS?

A. The legal problems of most concern to school counselors relate to the student's right to due process of law, release of information on students, informed consent, handling student records, the problem of confidentiality, disciplinary actions, right to privacy, and the question of privileged communications. Each of the following clusters of legal problems will be treated in this publication:

- Child abuse and neglect
- Counseling minors about v.d., pregnancies, contraceptives, drugs, abortions, and related health matters
- Problems associated with emancipated students
- Responses and cooperation to crime investigation in the schools
- Defamation of character
- Child custody problems

Q. WHY IS IT IMPORTANT THAT COUNSELORS KNOW THE LAW GOVERNING THEIR WORK?

A. Counselors are vital links in the day-to-day operation of the schools. In the role of child-advocate, protector, defender and parent surrogate, counselors play a necessary and formative role in the lives of children they counsel. As staff personnel, counselors are dedicated to assisting children in solving vocational, educa-

tional and personal problems in a world of rapid change. They are the "open door" where the child may go to get immediate adult feedback on these problems. It is important, therefore, that counselors become aware of their legal and professional rights and responsibilities in order to avoid needless litigation and to more courageously and effectively serve the needs of their clients, the State's children.

Q. MAY THE COUNSELOR BE SUED FOR MALPRACTICE?

A. Although malpractice suits are becoming more common against practitioners in other professions, the counseling profession has thus far escaped such suits. Teachers, on the other hand, have been sued for failure to teach the child what parents or guardians thought should have been taught, but such "consumer" suits are still not generally widespread in nature.

Malpractice suits (usually for damages) are predicated on the testimony of "expert" witnesses, usually of the same or related profession, that the defendant acted in an unethical, or unprofessional, way out of which flowed the student's injury (which here would be more spiritual and mental than physical in nature). For the defense, the counselor could call witnesses to testify that the practice was not unusual, improvident, nor harmful to the child's interests, leaving to the jury the decision as to what happened and whether the counselor acted in an acceptable manner.

Q. IS A COUNSELOR AN "ADMINISTRATOR" FOR TENURE PURPOSES?

A. No. Counselors in Colorado do not have tenure *as counselors,* only as teachers. A counselor is one who is first a certified teacher and endorsed as a counselor. Hence, the tenure is related to the function of teacher, not to the role of the counselor.

Other states have similar statutes. See *Fenasco Ind. Sch. Dist. v. Lucero,* 526 P.2d 825, 827, New Mexico 1974 (the counselor is not an "administrator"); *Griffith v. Board of Education,* 352 N.Y.S.2d 214, New York, 1974 (counselor may not be considered entitled to job of guidance coordinator).

Q. WHAT IS THE LEGAL STATUS OF THE SCHOOL COUNSELOR?

A. In Colorado, the school counselor is primarily a teacher. Other roles may include those of an employee of the district, a state

agent, or a parental surrogate, depending upon the circumstances. Since these roles are sometimes in conflict, it behooves the counselor to know what particular role he/she is playing at the moment in order to determine his/her legal and professional status.

Q. UNDER WHAT CONDITIONS MAY A COUNSELOR BE HELD LIABLE IN DAMAGES IN TRANSPORTING A STUDENT?

A. A counselor may be found liable for damages where a student is injured while riding with the counselor only if the jury holds that there has been negligence on the counselor's part. Children in such cases are not considered to be "guests" under the state's guest statute, hence they or their parents may bring suit for damages alleging negligence in performing an action from which the injury flows. Ordinarily, unless special arrangements are made to provide such coverage, individual automobile liability policies do not cover injuries to students when being transported by the school employee in a personally-owned automobile.

Q. WHAT IS THE RELATIVE IMPORTANCE TO THE COUNSELOR OF EACH OF THE SOURCES OF THE LAW?

A. For about 20 years, ever since the Warren Court's decision in *Brown v. Board of Education* (1954), educational institutions and personnel have been living pretty much under the common law (often called "judge-made" law). Thus, in order to know what the law is, one must become familiar with the decisions of the courts, particularly what the Supreme Court of the United States has said on any particular issue.

Q. WHERE COUNSELORS JOIN TEACHERS IN AN ILLEGAL STRIKE, MAY COUNSELORS BE DISMISSED FOR BREACH OF CONTRACT?

A. On June 17, 1976, the United States Supreme Court held that teachers who conduct an illegal strike may be dismissed by the board of education even during negotiations (*Hortonville Jt. Sch. Dist. v. Hortonville Teachers' Ass'n.*, No. 74-1606, 225 N.W.2d 658, Wisc. 1974). School boards are the official bodies which the legislature intended to run the schools, including hiring and firing of teachers. It seems to follow that should counselors join in an illegal work stoppage, they might too be considered to have breached their contracts of employment, for which the board may legally dismiss them.

Q. DOES ONE HAVE TO BE PARTY TO A COURT DECISION TO BE BOUND THEREBY?

A. No. Decisions of the United States Supreme Court transcend local and state law, and become the law of the land even though one does not belong to the class of individuals covered in the decision. Such a Supreme Court ruling is considered binding on the states and its citizens until revised or reversed by subsequent action of the Court.

Q. WHAT IS THE ROLE OF THE COUNSELOR, ENFORCER OR PROTECTOR?

A. The true role of the counselor is as a protector of the child's rights, be they vocational, educational or personal. The relationship has been described as one who stands *in loco parentis* (in the place of the parent), particularly the mother, whose role has been to protect the child, then ask questions afterwards. This is in contrast with the paternal role, which is generally seen as that of the enforcer.

The Code of Ethics of the American School Counselor Association (see Appendix A) states the position of the counselor thus: "Punitive action is not part of the counseling process." The school counselor must use his/her professional judgment in sharing information gained in the counseling process. In that respect, the principal role of the counselor is to protect the interests of the student at all times, instead of enforcing school rules and regulations through coercion, veiled threat, or implied punishment to come.

Q. MAY THE BOARD REQUIRE A COUNSELOR TO UPGRADE HIS/HER SKILLS IN ORDER TO CONTINUE IN THE POSITION?

A. Yes, within certain reasonable limits. The common law is that teachers and other school employees may be upgraded even though at the time of their initial employment such requirements were not in force and effect. But the board must defend its new requirements on the basis of need (to meet a valid state purpose; to give better service to children). The board must also afford employees sufficient time within which to meet the new requirements, but may not be required to pay additional compensation for the new requirements, nor for tuition or other costs, unless it has bargained the item with the teachers' representatives and agreed to do so.

Seeking Legal Assistance

Q. HOW CAN THE COUNSELOR PROCEED IN SOLVING PROBLEMS HAVING A LEGAL BASIS?

A. Normally, assistance to counselors is available through several avenues: 1) the Legal Department of the Colorado Department of Education; 2) the local unit of the teachers' association; 3) through consultation with the school's attorney; 4) through the counselors' state association; or 5) through consultation with a private attorney. Other organizations, such as the American Civil Liberties Union, the National Association for the Advancement of Colored People, and the Colorado Civil Rights Commission are additional sources of assistance on problems having legal bases. (See Appendix C).

Q. ARE ALL CITIZENS CHARGED WITH KNOWING WHAT THE LAW IS?

A. Ignorance of the law is not a legal defense, although the law has now become so complex and contradictory that it may seem unreasonable to expect a layman without knowledge or training in the law to know in each and every instance just what he or she should do in any given set of circumstances.

Q. SHOULD THE COUNSELOR ACT AS HIS OWN ATTORNEY?

A. There is an old saying in the law that "one who acts as his own legal counsel has a fool for a client." The counselor should not attempt to act as his/her own attorney, but should know the law well enough to know what responses are appropriate, and under what circumstances he/she should seek the advice of an attorney.

Acting *in Loco Parentis*

Q. WHAT IS THE LEGAL STATUS OF THE COUNSELOR STANDING *"IN LOCO PARENTIS"*?

A. This legal fiction was created by the courts in order to protect the child's interests while that child is absent from its natural parents attending school under the compulsory attendance act. The *in loco parentis* relationship of the teacher/counselor provides the adult with both rights and responsibilities; rights to discipline the child,

to direct the child's learning, and to otherwise act as the natural parent would act; responsibilities to care for the health, safety and welfare of the student under your care and supervision.

Q. WHAT IS THE STANDARD OF CARE EXPECTED OF THE COUNSELOR STANDING *"IN LOCO PARENTIS"*?

A. At trial on a charge of negligence, the judge would instruct the jury to test the counselor's acts, or lack of action, in comparison with what the normal, ordinary, prudent parent might have done under the same or similar circumstances. Thus, negligence is a matter of fact to be determined in each case by a jury of the counselor's peers.

Q. SHOULD THE COUNSELOR EVER ACT AS AN ENFORCER?

A. No. The idea is foreign to the basic philosophy under which counselors operate. Rather, the role of the counselor is that of a protector, a defender, a child-advocate, parent surrogate, or similar role. Since it is impossible to play both the protector and the prosecutor roles, the counselor should consistently and openly play the role of the protector.

Q. WHAT HAZARD DOES THE COUNSELOR FACE WHEN ACTING OUT THE ENFORCER ROLE?

A. Besides being out of character, there is a legal hazard involved where the counselor acts as enforcer. The Supreme Court has held that school "officials" may be held personally liable in damages where they knew or reasonably should have known that what they were doing would deprive a child of his or her civil rights under color of state law. Since counselors, as well as school administrators, are employees (agents) of the state, the court could conceivably hold that the Fourteenth Amendment and the Civil Rights Act of 1871 might apply. It is better therefore for counselors to refrain from playing the enforcer role, but instead stay in character and act as the protector of the child's interests against loss of civil rights.

Confidentiality and the Counselor

Q. IS A CITIZENS' COMMITTEE WHICH IS ADVISORY ONLY ENTITLED TO HAVE THE NAMES OF PARENTS OF EDUCATIONALLY DEPRIVED CHILDREN?

A. In New Mexico, the court upheld a school district in denying certain members of a parents' advisory council access to the names of parents of educationally deprived children. The names were sought on the grounds that such information was needed for effective involvement in the planning, development, operation and evaluation of projects under the Elementary and Secondary Education Act. *Lopez v. Lugumbill*, 483 F.2d 486, N.Mex., 1973.

Q. MAY SCHOOL PERSONNEL BE HELD LIABLE FOR RELEASE OF INFORMATION ABOUT A STUDENT?

A. Yes, if it results in physical or mental distress and/or suffering. In 1970, the Colorado Supreme Court held that actions by a creditor against a debtor amounted to outrageous conduct, warranting damages for invasion of privacy for reckless infliction of emotional distress without impact (without physical contact). *Rugg v. McCarty*, 173 Colo. 170, 476 P.2d 753. In a New York case in 1971, *Blair v. Union Free School Dist.*, 324 N.Y.S.2d 222, the court held that the act of a public school employee in divulging information given to the school in confidence by a pupil could constitute outrageous actionable conduct. Said the court, "Although the relationship of a student and a student's family with a school and its professional employees probably does not constitute a fiduciary relationship, it is certainly a special or confidential relationship. In order for the educational process to function in an effective manner it is patently necessary that the student and the student's family be free to confide in the professional staff of the school with the assurance that such confidences will be respected. The act of the school or its employees in divulging information given to a school in confidence, may well constitute outrageous actionable conduct in view of the special or confidential relationship existing between a student and his family, and the school and its professional employees." *Id.*, at 228.
See also *Nader v. General Motors Corporation*, 307 N.Y.S.2d 647 (1970) where the action of a corporation in seeking out information on plaintiff amounted to harrassment, and constituted outrageous conduct. The test is whether on hearing of the action, the average citizen would be likely to object that the action taken was "outrageous."

Q. MUST A COUNSELOR REVEAL IN COURT INFORMATION GIVEN IN CONFIDENCE BY A STUDENT?

A. In Colorado, counselors are not included among those professionals (lawyers, doctors, C.P.A.'s, ministers, and school psychologists) whose clients are protected against release of informa-

tion given to the professional practitioner in confidence. The right to confidentiality belongs to the client, not the professional.

However, counselors may choose as a matter of professional judgment not to reveal confidential information to anyone except a court.

A counselor in Kansas had her lawyer notify the judge of the professional ethical standard requirement of implied confidentiality when she was subpoenaed to appear in court. The judge allowed only three questions of a non-personal nature to be asked, then excused the counselor from the witness stand.

Q. IS THE COUNSELOR LEGALLY REQUIRED TO ACT AS A GOOD EXAMPLE FOR CHILDREN?

A. Yes, and so are all public school employees, including teachers. In New York state, a tenured counselor was under investigation on the charge that he spent the night with an 18-year-old girl who was a recent graduate and counselee. Plaintiff alleged invasion of his privacy. The court, however, found against him, holding that a teacher-counselor can be held to a higher standard of conduct and professional ethics than the ordinary citizen, since he must serve as an example to his students. The court felt that his actions would impair his performance on the job, since there was a not unlikely presumption that the affair began when the girl was his counselee. *Goldin v. Bd. of Educ.*, 357 N.Y.S.2d 867, 1974.

Q. MAY THE PARENTS BRING AN ACTION FOR MENTAL DISTRESS WHERE THE SCHOOL HAS RELEASED CONFIDENTIAL INFORMATION?

A. Probably not. It would be difficult if not impossible to prove that the parents had suffered mental anguish, since their mental distress is derivative of a sort, having been occasioned by a tort committed on their child. Hence, the damage, if inflicted at all, was inflicted upon the child, and not on the parent. In *Blair v. Union Free School Dist.*, 324 N.Y.S.2d 222, 224 (1971), the court denied parental relief where confidential information about their daughter had been released without their consent. It appears, however, that because of the special confidential relationship between a student and the counselor, the release of information given in confidence to the counselor which resulted in mental distress might amount to an invasion of privacy, and despite privilege, might be considered to be outrageous behavior sufficient to form the grounds for an action by the student, but not the parents.

Q. WHAT IS THE DIFFERENCE BETWEEN "CONFIDENTIAL INFORMATION" AND "PRIVILEGED COMMUNICATION" IN THE LAW?

A. Confidential information relates to those messages and information between the student and the counselor. As stated above, certain customs have arisen regarding the confidentiality which must exist between student and counselor in order for counseling to work.

Privileged communications, on the other hand, relates to the liability which may attach to the counselor who releases non-confidential information about a student, and that student suffers a loss of reputation as a result. Because they must deal with sensitive data, all teachers and administrators have what is called "qualified" or "limited" privilege regarding all communications released by them about a student or teacher.

Privileged Communications and the Counselor

Q. WHAT PRECAUTIONS MUST BE OBSERVED IN RELEASING INFORMATION ABOUT STUDENTS?

A. Generally speaking, information gleaned in the course of counseling about the student may be released to colleges or employers without legal liability to the counselor if these conditions are met: 1. One must be acting in the line of duty; 2. One must release the information to persons having the right to receive it; and 3. One must act without malice to discredit or harm the person to whom the information relates.

In addition, the NASSP has suggested that information on a student's personal characteristics should be "written comments limited so far as possible to observed events, existing conditions, and other non-judgmental evidence that relate closely to college admissions," in the case of release of information to colleges and universities. NASSP, *Curriculum Report*, Vol. 3, No. 5, 1974.

Q. DO COUNSELORS HAVE PROTECTION AGAINST CHARGES OF LIBEL AND SLANDER?

A. Like teachers and administrators, counselors have "qualified" privilege in the handling of information about students. The qualified part means that the privilege is not *absolute*, that there may be times when the counselor may be held personally liable in damages for defamation of character. The counselor must show lack of ill will, or intent to harm, the student by what is released.

He/she must be acting in the role of counselor, which implies that the interests of the child are to be protected at all times. And the information, rather than being released for wide dissemination, must be released only to those having the right to receive it. Ordinarily, the one bringing charges of defamation of character must also prove some loss of reputation or station, although some words about a person are actionable *per se* (attributing unchastity to a female, stating that the person has a loathsome disease, that a person is a homosexual). Most libel is avoidable. One should also avoid an invasion of the student's privacy in situations where, for example, a student is legally married but certain information about the marriage may strain the relationship and perhaps wreck the marriage.

Q. LEGALLY, WHAT IS CONSIDERED LIBEL AND SLANDER?

A. Libel and slander are together known as defamation of character, which is the tort of injuring a person's reputation or good name by "publication" which may be either written (libel) or spoken (oral). First, the words themselves must be defamatory — a student has been jailed for theft, a student has been ruined by drugs, or that a student is not to be trusted. Second, there must be "publication," which means communication to someone else. A defamatory statement needs only to be communicated to one person other than the defamed to be "published," and the third party may be the student's parent. Ordinarily, communications by counselors are considered "privileged" and the plaintiffs would have to prove malice in order to be awarded damages for defamation of character. In some instances, the courts have held that the plaintiff must prove that he/she has been damaged — that his/her reputation is less than it was before the communication — before damages can be awarded.

Q. IS TRUTH OF STATEMENTS MADE ABOUT A PERSON WHICH MAY HAVE A DEFAMATORY EFFECT A DEFENSE AGAINST CHARGES OF LIBEL OR SLANDER?

A. Whether or not the statements are in fact true is not the determining factor in a ruling for defamation of character. A court would proceed on the theory that the statements were false, and the burden is then on the defendant to prove that they are true as a defense.

The *intent* of the person making the statements is important. If a person intended to harm another, whether or not the statements were false or true, would be of the essence: if statements were made when defendant knew they were false, it would prove

an intent to harm. If the statements were true, but made in such a way as to result in loss of esteem, the important proof would be that the defendant meant to harm. Inasmuch as counselors must make statements about students, the protection of privileged communication shields the counselor so long as the intent is ultimately to help the student instead of to harm him or her.

Open Records

Q. WHAT CONSTRAINTS EXIST ON THE HANDLING OF STUDENT RECORDS?

A. There are both state and federal restrictions on the handling of student records. In Colorado, the open records law controls while at the federal level, the Family Educational Rights and Privacy Act of 1974, as amended, is controlling.

Q. WHAT IS THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT?

A. The Act is a public law passed by the Congress in 1974 and subsequently amended. The Department of Health, Education and Welfare, which administers the Act, developed regulations for local districts and others in administering the Act locally. These regulations were released in serial form beginning in January, 1975. The purpose of the Act was to provide parents with full disclosure of the contents of their own childrens' files. Also, any student who is 18 and has not graduated from high school may be permitted to view the contents of his own permanent record file. Each school district, college or university is directed to develop its own guidelines for viewing the records and to have these reduced to writing.

Q. MAY THE PARENTS OR AN ELIGIBLE STUDENT BE GRANTED A HEARING TO CONTEST THE ASSIGNMENT OF A GRADE?

A. No. However, a hearing may be requested to contest whether or not the assigned grade was recorded accurately in the educational records of the student. Thus, the student or the parents could seek to correct an improperly recorded grade, but could not through the hearing required pursuant to the Buckley Amendment contest whether the teacher should have assigned a higher grade because the parent or student believe that the student was entitled to the higher grade.

Q. WHAT THIRD PARTIES HAVE ACCESS TO STUDENT RECORDS WITHOUT THE CONSENT OF THE PARENTS?

A. Student records are available without consent to officials within the school district who have been designated by the school as having a legitimate interest in inspecting them, representatives of the Controller General of the United States, or the Secretary of Health, Education and Welfare, or state authorities requiring records for use in the audit and evaluation of requirements for federally-supported educational programs. Any data collected by these individuals may not include information (including social security numbers) which would permit the personal identification of a student. After audit and evaluation are completed, the data must be destroyed.

Other groups such as accrediting agencies may collect data but must conduct such data collection in such a manner as will not permit the personal identification of students and their parents, and the information gathered must be destroyed after use.

Q. WHAT ARE THE PROVISIONS OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT?

A. The Amendment is to be administered by the Department of Health, Education and Welfare which developed regulations for its administration. These regulations relate to requests to amend students' educational records, the right to a hearing, the conduct of the hearing to amend the records, the conditions under which personal records of students may be released, and under what emergency circumstances certain confidential information may be legally released by the school officials. The overall purpose of the Act was to protect the privacy of parents and students against unjust storage and/or release of information about students in the nation's schools and colleges.

Q. WHAT RECORDS ARE "PUBLIC RECORDS" UNDER THE FAMILY PRIVACY ACT?

A. The act covers all *official* records, files and data related to a student. These would include but not be necessarily limited to student cumulative record folders, student attendance information, academic work completed, level of achievement (grades, standardized achievement test results, and the like), interest inventory data, family background, and verified reports of serious or recurrent misbehavior. The amendment covers counseling records only where those data are actually "a part of" the official record. Typically, this type of information is considered confidential and

does not become a part of the student's official record.

Under the state open records law, guidelines were being developed in 1976 to assist counselors and others to know what their constraints were. The counselor should write the Department of Education to obtain copies of these guidelines.

Q. DO PARENTS OF A DEPENDENT 18 YEAR OLD STUDENT HAVE THE RIGHT OF INSPECTION OF THEIR CHILD'S EDUCATIONAL RECORDS?

A. The Family Educational Rights and Privacy Act of 1974 (FERPA) grants an absolute right to parents and to students over 18 years of age or students enrolled in a post-secondary school to inspect all student records within 45 days of the request to inspect. A student's right to inspect his records supersedes the rights of parents when the student becomes 18 or enrolls in a post-secondary school. But parents of dependent children (as defined for the purpose of the income tax dependency law) continue to have a right to secure information about their child without the child's consent, even if the student has become 18 years of age. Former students also have inspection rights. With the dependency exception, parental inspection rights cease when the student becomes 18 or enrolls in a post-secondary school.

Q. ARE COLORADO OPEN RECORDS LAWS IN CONFLICT WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT?

A. No. There are some differences, however. For example, the federal act states that one who requests access to a student's records shall be provided such access within 45 days; the Colorado law requires access be given within 5 days' time (5 school days). The concept is much the same in each instance: to provide that state officials shall perform their duties in the open, and to set up a procedure whereby any citizen who wishes to challenge the state's alleged secrecy may have machinery by which that purpose may be accomplished.

Q. ARE STUDENTS OVER 18 COVERED BY THE PRIVACY ACT?

A. The act speaks of those over 18 and those under 18, and sets up two different standards for the two groups. For those students under 18, the parents or guardian must be granted access to their children's records, as must teachers and other school personnel who have a legitimate educational interest in seeing them. The problem of course is what constitutes a "legitimate" educational

interest. In addition, a copy of the records must be given to parents or legal-age students if they request one (there may be a production charge). For anyone else (including a police officer) who wants to peruse the files, written consent must be obtained beforehand from the parent or legal-age student or through a court order or subpoena. Written consents must be specific as to which records are to be examined. A student over the age of 18 may have access to his/her own record by following the written procedures which each school district is required to promulgate for the viewing of such records.

Q. HOW MAY A STUDENT OR HIS PARENTS AMEND THE CONTENTS OF THE STUDENT'S RECORDS?

A. Section 99.10 of the guidelines states that if a parent or an eligible student believes that the student's record is inaccurate, misleading, or invades the privacy of the student, that person may request that the educational agency amend the records. The educational agency or institution must decide within a reasonable time either to refuse or amend the records and must inform the parties of its decision. If concerned that the institution is stalling, the parent or eligible student may exercise his right to a hearing without benefit of the decision from any informal proceeding.

There is no time limit within which the record must have been made, as within the last two or three years. The purpose of the hearing is to correct the record regardless of when the information was entered in the education record. If after a hearing the institution believes that the information is incorrect or misleading or otherwise violates the student's rights, the institution shall amend the record accordingly, and so inform the parties in writing to that effect.

Q. UNDER WHAT CONDITIONS MAY SCHOOL OFFICIALS DISCLOSE INFORMATION FROM THE EDUCATIONAL RECORDS OF A STUDENT?

A. Section 99.21(c) of the HEW Guidelines relating to the so-called Buckley Amendment states that an educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. The factors to be considered in releasing the information are 1) the seriousness of the threat; 2) the need for the information to meet the emergency; 3) whether the parties requesting the information are in a position to deal with the emergency; and 4) the extent to which time is of the essence in dealing with the emergency.

Q. WHO MAY SEE STUDENT FILES WITHOUT PRIOR CONSENT?

A. School officials in another district may look at records of any student who plans to enroll there, provided that the parents or guardian are notified in advance that records are being tranferred and are given an opportunity to request a hearing if they want to challenge the accuracy of the information being transferred. Furthermore, information may be released without consent in connection with applications for student financial aid. Federal officials (such as H.E.W. and General Accounting Office personnel) may see files without parental consent in order to enforce federal laws or to audit and evaluate federal education programs. However, information given to such federal employees may not personally identify a student, and that includes the use of the social security number, unless Congress, by law, specifically authorizes federal officials to gather personally identifiable information.

Q. WHAT IS NECESSARY IN ORDER TO TRANSFER A STUDENT'S RECORDS FROM ONE DISTRICT TO ANOTHER?

A. The guidelines require that parents must be notified in advance that records are being transferred to another district. There are several ways in which this could be done. One is to request the parents at enrollment time to sign a statement that they are aware that in the event the child is moved to another district, his or her records will be transferred to the receiving district without the formality of calling for parental consent. Another plan it to release the records to another district only on the written request of the parents. The district must decide on its own policy, and any plan which will meet the prior parental information test will be adequate to meet the needs of the Act.

Q. WHAT PROTECTION DO COUNSELORS HAVE AGAINST LIABILITY FOR ALLEGEDLY ILLEGAL RELEASE OF INFORMATION ABOUT A STUDENT?

A. Counselors and teachers standing *in loco parentis* to the student have a qualified (limited) privilege which protects them against suits for claims of illegal release of records, so long as they act in good faith and without malice. Where counselors release information in the line of duty to those who have the right to receive that information, and acting in good faith, believing what they release is truthful, have a protection against liability for damages. Even in court, the counselor may be said to have some protections for

his/her client's confidentiality, depending upon the circumstances in each case, although by law Colorado counselors do not have specific statutory protection *per se*.

Philosophy of Counseling

Q. WHAT IS THE RATIONALE UNDERLYING THE WORK OF THE COUNSELOR?

A. Much of what became orthodox in counseling originated in the work of the juvenile court judges, particularly Judge Ben B. Lindsey who originated the juvenile court in Denver around 1900 in response to appalling conditions he encountered in which juvenile offenders were locked up in jails with hardened criminals. Lindsey maintained that children "were victims of their surroundings," and often at the mercy of adults who maltreated them or ignored them completely. He said that the State had a duty to the child to provide custody where that privilege had been denied him by his parents or society in general.

Q. WHAT HAS BEEN THE HISTORY OF CHILDREN'S RIGHTS IN THE UNITED STATES?

A. The old English laws governing children were imported into the United States and became the basis for our child treatment laws. A child could be indentured by his parents, or by the State, if he were a public charge. Children over 14 were treated as adults if they broke a law. The punishment was severe on the grounds that severity would prevent further crime. After the establishment of the juvenile courts the judges played the "father" role and had almost unlimited power to make dispositional decisions about children. Since children seldom had legal counsel, appeals were rare. In 1967, the Supreme Court held that juvenile courts could not deny children due process of law. As a result of this and other reforms, the Colorado Children's Code became law on July 1, 1967. The Code contains the due process guarantees mandated by the Supreme Court in the *Gault* case in the same year.

Q. WHAT DID JUDGE BEN B. LINDSEY BELIEVE WITH REGARD TO THE CONFIDENTIALITY OF INFORMATION GIVEN TO HIM BY THE CHILD?

A. He believed that such communications are privileged, that is, they are confidential if confidentiality is desired. Called to the stand in

a murder trial, he refused to testify about confidential information given to him by the 12-year old son of the accused mother. The boy, to shield his mother, had told Judge Lindsey that he himself had shot his father. Judge Lindsey refused to testify because he considered such confidences to be privileged communications. He was held in contempt of court, and fined the sum of $500. On appeal, the Colorado Supreme Court affirmed the lower court's decision.

Lindsey v. The People, 66 Colo. 343 (1919).

Q. WHAT CHANGES IN THE WAY CHILDREN ARE TREATED HAVE COME ABOUT IN AMERICA WHICH CONTRAST WITH THE TREATMENT OF CHILDREN IN ENGLAND?

A. Despite its stern Calvinistic attitude, much progress toward recognizing the rights of children characterize American contributions to the law of juvenile justice. In 1914, Judge Ben Lindsey of the Denver Juvenile Court in addressing the Mothers' Congress expressed it this way:

> Within a century, children as young as twelve and fourteen, as young as nine years of age, were condemned to death for what is now regarded as petty offenses against property. The great fundamental change that has come over us is this: The proceeding that was formerly to protect property has become one to protect the child.

Q. WHAT IS THE STATE'S ROLE IN DEALING WITH DELINQUENCY?

A. Under the doctrine of *parens patriae* (the state is the over-parent), Judge Lindsey maintained that

> The crime of the state will be against the child when it permits it to become the victim of conditions over which it has no control, but for which society and civilization are to blame. The state, in the end, must preserve the home for the child. This victory for the child has been won with the universally accepted principle that the state's duty to the erring child is analogous to that of the natural parent — to aid, to educate, to correct, to redeem, to save — in a word, to help and not to hate, because it is dealing with its child as well as your child, since the responsibility is joint and parenthood is supreme.

The Bill of Rights and the Counselor

Q. WHAT PRIOR RESTRAINTS MAY THE SCHOOL PERSONNEL HAVE WITH RESPECT TO STUDENT-PRINTED MATERIALS?

A. Every school district should develop guidelines for the use of students so they can tell whether their publications are within the constraints placed upon them by the district. The First Amendment protects freedom of the press, so there is a presumption that any prior restraint rules are unconstitutional. To overcome such presumption, it must be shown by school officials that there was a likelihood of disruption of the school's program of studies, or that there was littering, or general disturbance during the distribution of the newspaper in question. Thus, the district's censorship rule must be narrow, objective as to time, place and conditions of distribution, and that there were clear and reasonable constraints upon the contents of the publication itself. *Baughman v. Freienmuth*, 478 F.2d 1345, Md., 1973.

Q. DOES THE RIGHT TO PRIVACY EXTEND TO MINORS?

A. A fundamental right to privacy for individuals is not specifically provided for in the U.S. Constitution. However, the Supreme Court has recognized that such a right is implicit within the various amendments. The Court has been particularly sensitive to the right to privacy in areas relating to marriage, procreation and family life. Recent court decisions, for example, have held that there is doubt about the validity of parental consent statutes requiring the consent of the parents for a minor to obtain an abortion. *Foe v. Vanderhoof*, 389 F.Supp. 947, 952 Colo. 1975; *Coe v. Gerstein*, 376 F.Supp. 695, Fla. 1973. Many First Amendment rights have been extended to minors. Unless the State can demonstrate a reason for limiting an individual's right, it appears that the right to privacy extends to minors as well as to adults. In *Eisenstadt v. Baird*, 405 U.S. 438, 1972 the Supreme Court defined the right to privacy as "the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." (Emphasis supplied).

In *Foe*, the court said that the right to privacy in regard to an abortion decision extends to minors, particularly where the minor is living away from home and has made a voluntary and informed decision regarding abortion. But it must be remembered that the right to privacy, as is true of other constitutional rights, is not absolute, but must be considered against important state interests in regulation. The State may infringe on the constitutional right to privacy. But before it may do so, it must demonstrate interests "so compelling as to justify the intrusion on the fundamental right involved." *Foe*, at 954. As the pregnancy progresses, the right of the state to limit its termination increases, since the state is interested in fetal life.

28

Q. ARE STUDENTS IN SCHOOL ENTITLED TO DUE PROCESS OF LAW?

A. Yes. There is a lengthening line of U.S. Supreme Court cases in which the Court has held that children are "persons" under our Constitution, and that they do not shed their constitutional rights at the schoolhouse gate. In the case of *Gault,* (87 S.Ct. 1428, Ariz. 1967), the Court held that neither the Bill of Rights nor the right to due process of law "are for adults alone." The same sentiments were expressed in the suspension and expulsion (q.v.) cases in 1975. As early as 1925, a New Jersey court declared: (*Lippincott v. Lippincott,* 128 A. 254) "Thus, it has been quite generally held that even the natural right of the father to the custody of his child cannot be treated as an absolute property right, but rather as a trust reposed in the father by the State, as *parens patriae,* for the welfare of the infant." (Children below the age of majority have historically been referred to in the law as "infants," "chattels," or "those in need of supervision." Such labels are now being discarded in favor of the idea that children, even those of tender years, are "persons" with full constitutional rights both in and out of school.)

Q. HOW CAN THE RIGHT TO ATTEND PUBLIC SCHOOL BE CONSIDERED A "LIBERTY" RIGHT?

A. Under conditions in which the State takes an action to interrupt school attendance in such a way that the student's good name, reputation, or future possibilities for employment are endangered, the Supreme Court has held (1975) that the student may seek protection under the "liberty" clause of the Fourteenth Amendment. If one is labeled in any way — drop-out, truant, expellee — such a tag may attach to the child throughout his life, and become the basis for later troubles, because of what the State has done to him/her. Under those conditions, the Court apparently was saying that one so treated is less apt to be at "liberty" — may lack the freedom — to move around, to be considered an honorable citizen, and to obtain employment than he would be before the State took the action. Hence, the right to attend public school free from stigma because of what the State is doing to him is a right protected under the "liberty" clause of the Fourteenth Amendment to the U.S. Constitution.

Q. JUST HOW *MUCH* EDUCATION IS A CHILD ENTITLED TO?

A. In 1973, the Supreme Court held that education is not a "fundamental right" protected under the U.S. Constitution (*Rodriguez v.*

San Antonio Ind.Sch.Dist., 406 U.S. 1, Texas). If there is a right to an education, it must be found in each of the various state constitutions. Since Colorado's constitution (Art. IX, Sec. 2) provides only for a "thorough and uniform" system of education, it must of necessity be the task of the legislature subject to review by the courts as to what the child's birthright may be in Colorado.

Since in *Rodriguez* the State of Texas was providing to all its children a "minimal" level of education to enable the child to later function as a citizen (vote, hold office, serve on the jury, pay taxes, serve in the armed forces) it appears that a state could make the case that once it has provided the basic skills appropriate to this status, then it has fulfilled its "legitimate state purpose"; this creates the illusion that "schooling," is enough; that an "education" is not guaranteed within the meaning of a "thorough and uniform" educational system. *Peter W. Doe*, who was graduated from high school with only a fifth grade reading skill brought an action in damages against the City of San Francisco, claiming the state had failed to provide him with the basic minimal education guaranteed in the State constitution. The case was on appeal after it was thrown out in the federal district court in San Francisco as this was being written.

Q. IS THE RIGHT TO ATTEND THE PUBLIC SCHOOLS A "PROPERTY" RIGHT PROTECTED UNDER THE FOURTEENTH AMENDMENT?

A. Yes. The Supreme Court has held (1975) that the right to attend school at public expense is a protected right under the property clause of the Fourteenth Amendment. Since "in these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education," the Court held that, "where the State has undertaken to provide it (education for all), the right to attend school is a right which must be made available to all on equal terms." Thus, the State may not discriminate against a child by denying him such a right, since it amounts to "property", except and only when the State has accorded the child full protection of due process of law as guaranteed under the Fourteenth Amendment.

Q. MAY MARRIED STUDENTS BE LEGALLY EXCLUDED FROM PARTICIPATION IN EXTRA-CURRICULAR ACTIVITIES?

A. While the courts are not in full agreement on this question, it appears that the burden of proof would rest with the board to show cause why it must have such a rule. In *Romans v. Crenshaw*, 354

F.Supp. 868, Texas, 1972, the court held that "any and all extracurricular activities cannot rationally be disassociated from school courses proper where they do or may form an element in future eligibility or honors. Such a practice is not only discriminatory on its face but is fundamentally inconsistent with the state's promise of a public education for its youth upon an equal basis." Especially strong on behalf of married students is the presumption that the extra-curricular activity may lead to a career, such as in baseball. *Davis v. Meek*, 344 F.Supp. 298, Ohio, 1972.

Q. ARE STUDENTS IN SCHOOL ENTITLED TO EQUAL PROTECTION OF THE LAWS?

A. Yes. In *Brown v. Board of Education*, 347 U.S. 483, 1954 the Supreme Court held that providing "separate but equal" facilities for the races is inherently unequal, and violated the equal protection clause of the Fourteenth Amendment. Many of the class actions brought in the 1950's and 1960's have been based on this clause. Where the state has elected to provide a free public education, it must do so on an equal basis for all, so that no invidious discrimination exists. But in *Rodriguez*, (q.v.), the Supreme Court held that the federal Constitution does not guarantee "equal educational opportunity," where a state has provided for all its children a minimal type of "schooling". What it does guarantee is that no individual child shall be invidiously discriminated against in providing the state's basic birthright to a thorough and uniform (for Colorado) education at public expense.

Q. MAY GIRLS BE PROHIBITED FROM COMPETING ON THE SAME TEAMS WITH BOYS IN ATHLETIC EVENTS?

A. There are a number of cases which say that under certain conditions (demonstrated ability of a girl to compete in non-contact sports on an equal footing with boys; lack of a competitive program for girls in their high school) that girls cannot be barred from competing with boys. *Gilpin v. Kansas State H.S. Activities Ass'n.*, 377 F.Supp. 1233, 1974; *Brenden v. Ind. Sch. Dist.*, 477 F.2d 1292, 8th Circ., 1973, originating in Minnesota. In contrast is a case which arose in Pennsylvania, where the court held that "separate but equal" competition, unlike that of racial discrimination, is justifiable and should be allowed to stand where there is a rational basis for the rule (the athletic association provided for "separate sports teams" for the sexes). *Ritacco v. Norwin Sch. Dist.*, 361 F.Supp. 930, 1973.

Q. MAY GIRLS BE PROHIBITED FROM TAKING "BOYS'" COURSES SUCH AS SHOP?

A. No. There are no longer "boys" or "girls" courses, only courses. Some states have enacted legislation outlawing sex discrimination in schools, but even in the absence of such legislation, it is doubtful that a student could be refused admission to a course of study because of sex alone. Title IX governing the 1972 Education Amendment's ban on sex discrimination in federally-funded educational institutions further limits the extent to which sex may be the basis for exclusions or grouping of students.

Civil Rights Act of 1871

Q. WHAT IS THE CIVIL RIGHTS ACT OF 1871?

A. Following the War Between the States, the Congress enacted legislation designed to protect the freedmen and restore order in the Union. Among the acts passed was one "to enforce the provisions of the Fourteenth Amendment, and to protect all persons in the United States in their civil rights, and to furnish the means of their vindication," — the CRA of 1871. Section 1983 of that Act provides that "any person who, under color of state law, shall subject, or cause to be subjected, any person to the deprivation of any rights, privileges or immunities secured by the Constitution, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress." The courts have held that the latter includes damages against the "person" who perpetrates the deprivation. After 100 years of inactivity, the law was dusted off and became the cornerstone of the civil rights movement in education.

Q. WHAT IS THE PENALTY AT LAW IF AN ADULT DEPRIVES A CHILD OF HIS CIVIL RIGHTS?

A. The remedy at law is to bring an action under the Civil Rights Act of 1871 (42 U.S.C.§1983) asserting the deprivation of some right guaranteed by the Constitution, such as a denial of the right to privacy, or to go to school. Plaintiffs must bear the early burden of proof that a constitutional right is indeed involved. Once the court has agreed, then the burden of proof shifts to the adult to show cause why it is necessary under the circumstances to limit the child's individual freedom. The penalty is that a child may collect damages, or other forms of relief under the Civil Rights Act of

1871. The money would not come from public coffers — individuals in this situation are considered to be "persons" who conspire (or co-conspire) to limit individual freedom, hence are not protected by the school budget. If the court rules that the service of an overriding public purpose to be served is greater than the individual's right to his civil liberties, the adult will win. If the other way, the child will win.

Q. AT WHAT AGE DO STUDENTS HAVE "CIVIL LIBERTIES"?

A. Being "emancipated" and coming into one's civil liberties are not the same — the Supreme Court has held that children are "persons" under the Constiution even in school. They have "civil liberties" — speech, assembly, privacy — from birth on. The schools should be prepared to allow children all the freedom in school they can safely handle. This will naturally vary from class to class, from individual to individual. The counseling program can assist students to make the transition from complete dependence to complete self-reliance. In the words of Edward T. Ladd: "This means that counseling *per se* doesn't influence students to comply with what the school wants any more than it influences them to resist it, but that it influences them to decide for themselves in which respects to comply and in which to resist. Whatever decisions the students make, the counselor recedes further and further into the background." Edward T. Ladd, "Civil Liberties for Students — At What Age?" 3 *Jrnl. of Law & Educn.*, 251, 255, April 1974. The implication is that the counselor is a child-advocate to assist students to make decisions based on reasoned thinking rather than on reflex action.

Student Discipline and Control

Q. DO THE COURTS RECOGNIZE VARYING DEGREES OF DUE PROCESS OF LAW?

A. Yes. The general rule is that the more serious the punishment, the more careful must school officials be in assessing the sanction. This means that less-formal measures of due process are due the student who is suspended, than one who is expelled. "When a serious penalty is at stake, a school board must provide a higher degree of due process than when the student is threatened only with a minor sanction," said one court. *Lee v. Macon Co. Bd. of Educ.*, 490 F2d 458, 460, 1974. The same court held that expulsion is the extreme penalty, the ultimate punishment. "Stripping a child of access to educational opportunity is a life sentence to second-rate citizenship."

Q. MAY A STUDENT'S GRADE BE LOWERED AS PUNISHMENT FOR MISBEHAVIOR OR OTHER NON-ACADEMIC REASONS?

A. Courts will generally not review whether a student deserves a particular grade unless the student can prove that it was given for a non-academic reason. For example, where the teacher said that a certain student in his class would not get a passing grade regardless of the quality of his work, the court substituted its judgment for that of the teacher and ordered the grade raised to passing. But the burden of proof is with the student that the teacher was acting arbitrarily or maliciously in giving a low grade for reasons unrelated to the quality of the work. Continued absence, for example, should be related to the final grade only insofar as it affects actual achievement in the subject. The New Jersey Commissioner of Education ruled that "the use of grades as a means of punishment is improper. Hence, a student's rights are prejudiced where he is given a zero for truancy and then given a make-up test, but the zero is weighed against the result." *Minorics v. Bd of Educ.*, NJ Comm.Decisions, 1972.

Q. MAY A STUDENT BE PUNISHED FOR ASSOCIATING WITH THOSE WHO DO NOT FOLLOW THE LAW?

A. No. Guilt by association is not permitted, except where one is an accessory to the act. In Iowa, a high school activities association had a rule rendering ineligible for a full year any boy who knowingly rode in a car where beer was being consumed. A boy was denied participation in athletics when outside the season he rode in a car in which beer was being consumed, although he was not himself drinking beer. He challenged the ruling as guilt by association. The Supreme Court of Iowa held such a rule denied the boy a valuable property right (to participate) without due process of law. *Bunger v. Iowa H.S. Ath.Ass'n.*, 197 N.W.2d 555 (1972).

Q. WHAT IS THE STATUS OF LOITERING STATUTES ON OR NEAR THE SCHOOL GROUNDS WHILE SCHOOL IS IN SESSION?

A. The courts have held that the board of education or the administration may reasonably limit student contacts with outsiders during school hours, even to the enforcement of a state statute which makes it a crime to loiter in or near a school while school is in session. The rules against such outsiders must be non-discriminatory, however. If you let one group come into school to distribute literature or to speak, you must then also allow other groups to do the same. The criterion is whether the intrusion

from outside tend to disrupt or disturb the peace or good order of the school. Although the First Amendment provides for freedom of the press, it does not protect those who unlawfully distribute literature on school grounds, or come onto school property with the view of convincing students to play hookey, or to picket. *People v. Hirst*, 106 Cal.Rptr. 815, California, 1973.

Q. IS THERE A RIGHT *NOT* TO GO TO SCHOOL?

A. Compulsory attendance applies to children between the ages of 7 and 16 years who are physically fit to attend school. The Colorado School Attendance Law of 1963 requries 172 days' attendance during each school year except for those children who are temporarily ill or injured or whose absence is approved by the administrator of the school of attendance, or who attend for the same number of days an independent or parochial school which provides a basic academic education comparable to that provided in the public schools of the state; or who are absent because of physical, mental or emotional disability; who have been suspended, expelled, or denied admission in accordance with law; or to whom a current work permit has been issued; or who are in the custody of a court or law enforcement authority; or who have graduated from the 12th grade, or are pursuing a work-study program under the supervision of a public school; or who are being instructed at home by a teacher certified by the State of Colorado.

Q. WHAT DUE PROCESS RIGHTS HAS THE STUDENT WHO IS TEMPORARILY SUSPENDED FROM SCHOOL?

A. In January, 1975, the Supreme Court held in *Goss v. Lopez*, 95 S.Ct. 729 (Ohio) that the student, before being sent home, and within minutes after the event which causes the suspension is entitled to at least these three minimal elements of due process: 1) the right to know *why* he is being punished; 2) the right to know *what your evidence* against him/her consists of; and 3) the right to *tell* his/her own *side of the story*. The school should attempt to notify the parents of the action taken. The majority cautioned that this does not include the right to legal counsel, and the full panoply of due process guarantees available in the case of expulsions. The test of all due process of law is fundamental fairness: were the actions taken in the name of the State essentially non-discriminatory considering all the circumstances obtaining at that particular time and place?

Q. WHAT CONSTITUTES DUE PROCESS OF LAW IN EXPULSION CASES?

A. In February, 1975, the Supreme Court (*Wood v. Strickland*, 95 S.Ct. 992, Ark.) majority indicated that at least the following provisions must be made by the board of education in long-term expulsions, none of which may extend beyond the end of the current school year: 1) written notice of the charges, the intent to expel, and time given to prepare a defense; 2) notice of a hearing, stating time, place and circumstances; 3) an impartial, full and fair hearing before an adjudicator who is not the same person who collected the evidence; 4) the right to be represented by legal counsel; 5) opportunity to present witnesses or evidence on behalf of the pupil and to cross-examine hostile witnesses; 6) some kind of record of the hearing (not necessarily verbatim) demonstrating that the decision was based on the evidence; and 7) the right of appeal to a court of competent jurisdiction. In general, the more serious the offense, the more careful must school officials be in protecting the interests of the student.

Q. MAY THE PARENT VETO CORPORAL PUNISHMENT FOR HIS CHILD?

A. No. Colorado has no statute either permitting nor prohibiting corporal punishment for school children. In *Baker v. Owen*, 395 F.Supp. 294, a federal district court in North Carolina held that school officials, acting within their powers and in the absence of a state law prohibiting corporal punishment for school children, could administer such punishment, and the lack of a hearing was not an unconstitutional invasion of their privacy. However, Colorado has a criminal and civil liability statute which would permit a child who has been excessively punished to collect damages if school officials inflicted unreasonable corporal punishment.

Q. UNDER WHAT CONDITIONS MAY SCHOOL PERSONNEL ADMINISTER CORPORAL PUNISHMENT?

A. Except in those states which prohibit corporal punishment by statute, administering reasonable corporal punishment to school children is permissible so long as the following constitutional due process guarantees are accorded the child: 1) students must have been forewarned what behaviors will result in corporal punishment; 2) corporal punishment may be used only as a last resort; 3) a teacher or principal may punish only in the presence of a second adult who is informed of the charge beforehand in the student's presence; and 4) after the punishment has been delivered, the school must write a note to any parent who requests it, telling the details and what teacher or teachers were present. Parents are not allowed to veto corporal punishment for their own children.

However, under 1) above, "fair warning is not required for those acts of misconduct which are so antisocial or disruptive in nature as to shock the conscience." *Baker v. Owen*, affirmed, U.S.S.Ct. Oct. 20, 1975.

Q. MAY THE COUNSELOR OR TEACHER VERBALLY CHASTISE THE STUDENT?

A. An Illinois court has so held. Said the court, in holding for the teacher, "No cause of action derives from the teacher's verbal chastisement in the absence of proof of malice or wantonness." *Wexell v. Schott*, 276 N.E.2d 735, 1971. Verbal chastisement which tends to hold a child up to ridicule by his/her classmates is not necessarily illegal *per se*, since the proof is in whether the teacher acted arbitrarily, capriciously, or with malice aforethought.

The Childrens' Code

Q. WHAT IS THE PURPOSE OF THE CHILDREN'S CODE IN COLORADO?

A. The General Assembly declared that the purpose of the Children's Code was to secure to each child such care and guidance as will best serve his welfare and the interests of society; to preserve and strengthen family ties; to remove a child from the custody of his parents only when his welfare and safety or protection of the public would otherwise be endangered; and to secure for any child removed from the custody of his parents the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of society.

Q. WHAT KINDS OF HEARINGS ARE PROVIDED FOR UNDER THE COLORADO CHILDREN'S CODE?

A. Several kinds of hearings are provided for. Most commonly used, however, are the adjudicatory and the dispositional hearings.

An adjudicatory hearing is held to determine whether the allegations cited in a petition are supported by the evidence. A dispositional hearing, on the other hand, is a hearing set to determine what disposition or plan should be made concerning a child adjudicated to be delinquent, in need of supervision, or neglected or dependent. Such a hearing may be part of the adjudicatory hearing or held separately.

Q. WHAT IS A DELINQUENT CHILD UNDER THE CHILDREN'S CODE?

A. A delinquent child in Colorado is defined as a child 10 to 18 years of age who has violated a federal or state law, or a municipal ordinance for which the penalty may be a jail sentence or who has violated a lawful court order. Exceptions: traffic laws and regulations of the Division of Wildlife and Division of Parks and Outdoor Recreation. A delinquent child may also include any child under 16 who has violated a traffic law or ordinance *if* his case is transferred from the county court to the juvenile court.

This definition of delinquency does not apply to a 14-18 year old who allegedly commits a crime of violence defined as a class 1 felony, or to a 14-18 year old who has previously been transferred to District Court Criminal Division for a felony-type offense and allegedly commits another felony-type offense; or to a 16-18 year old who is charged with a class 2 felony or class 3 felony (burglary, arson) *and* has been adjudicated a delinquent for a felony-type offense within the previous two years.

Q. WHAT IS A CHILD IN NEED OF SUPERVISION?

A. Under the Colorado Children's Code, a child in need of supervision (CHINS) is a child who is repeatedly absent from school, a runaway, beyond the control of his parents, or "... whose behavior or condition is such as to endanger his own or others' welfare...."

Q. WHAT IS THE LEGAL DEFINITION FOR A NEGLECTED OR DEPENDENT CHILD?

A. Under the Colorado Children's Code, a neglected or dependent child is a child who has been abandoned, mistreated, or abused by a parent or guardian or legal custodian; or whose parent, guardian or legal custodian has allowed such mistreatment by another; or who lacks proper parental care; or whose environment is injurious to his welfare; or who is homeless or lacking proper care through no fault of his parent, guardian or legal custodian.

Q. WHO HAS LEGAL CUSTODY OF A CHILD?

A. Legal custody is defined in the Colorado Children's Code as the right to care for and control the child and the duty to provide all his immediate needs. It may be taken from a parent only by court action.

Q. MUST THE CHILD BE GIVEN INSTRUCTION AS TO HIS CONSTITUTIONAL RIGHTS?

A. Yes, the Colorado Children's Code provides that at his first appearance before a juvenile court, the child, his parents, guardian or legal custodian shall be fully advised by the court of their constitutional and legal rights including the right to a jury trial as provided in the law and the right to be represented by counsel at every stage of the proceedings.

Q. UNDER WHAT CONDITIONS MAY A CHILD PETITION FOR EXPUNGEMENT OF HIS RECORDS?

A. Two years after termination of a juvenile court's jurisdiction over a child or sooner if the parties agree, or two years after unconditional release from supervision of the Department of Institutions, a child may petition for expungement of his records. A hearing is held. The district attorney's office is advised. If there has been no conviction of a felony or of a misdemeanor "involving moral turpitude" and the court is satisfied that the rehabilitation has taken place, the child's records are sealed, whereupon the court will permit inspection of the records only at the petition of the person concerned. To all others, the court or child may reply that no court records exist concerning the child.

Q. WHEN MAY THE POLICE TAKE A CHILD INTO TEMPORARY CUSTODY WITHOUT A COURT ORDER?

A. Under any of the following conditions, the police may take a child into temporary custody without a court order: when there is reasonable ground to believe he has violated the law; when he is lost or abandoned; when he is seriously endangered and needs protection; when he is a danger to himself and others; and when he is a runaway. The Colorado Children's Code provides that when a child is taken into custody, the parents or legal guardian must be notified as soon as possible. At this point, the child may be released to the custody of his parents, or to another responsible adult who may be required to give written promise to bring the child into court at some future date.

Q. WHAT IS A "GUARDIAN *AD LITEM*"?

A. A guardian *ad litem* is an adult who is appointed "for the purposes of the suit." The court may appoint a guardian *ad litem* when there is no parent or guardian present, or there may be a conflict of interest between the child and the parent, or the court

finds that it is "in the best interest of the child and necessary for his welfare."

The court shall appoint a guardian *ad litem* when the parent is mentally ill, or mentally deficient, or the child has no guardian, or proceedings are initiated in cases of child abuse.

Following a hearing, the court will then declare the child either a delinquent, a CHINS, or neglected or dependent, if the evidence supports such a finding.

Relationships With Parents

Q. MAY THE PARENTS BE ENTITLED TO EDUCATE THEIR CHILDREN "AS THEY SEE FIT" AT HOME?

A. In a case in which the parents pleaded a religious right to educate their children "as they see fit" and in accordance with what best "serves the family's interests and welfare", the court found that their choice did not rise above a personal desire to have and keep control of their children, and did not rise to constitutional levels. "The burden of proof that a plan of home instruction qualifies as a private school must rest with the parents who have withdrawn their children from the public schools," said the court in holding that the parents must send their children to the public schools or stand ready to face charges for ignoring the compulsory attendance laws. *Scoma v. Chicago Bd. of Educ.*, 391 F.Supp. 452, 1974.

Q. CAN THE CHILD BE PUNISHED FOR AN ASSAULT AND BATTERY ON THE TEACHER/PRINCIPAL BY THE MOTHER?

A. English law, which forms the basis for our own, does not allow one to be punished for another's shortcomings. In a case which arose in Louisiana, two children were suspended from school because the mother struck the assistant principal in the course of a disagreement concerning the son's previous suspension for a few days. The mother was charged with assault and battery and she pleaded guilty. However, the court held that the children could not be punished for the conduct of their mother; a person may be punished only on the basis of his/her own guilt. *St. Ann v. Palisi*, 405 F.2d 423, 1974.

Q. IS PARENTAL KNOWLEDGE AND CONSENT ESSENTIAL IN IDENTIFYING POTENTIAL DRUG ABUSERS IN SCHOOL?

A. In Pennsylvania, a school district undertook a program to identify early those children whom were thought to be potential drug

abusers. A letter home to parents was held by the court to "lack the necessary substance to give a parent the opportunity to give knowing, intelligent and aware consent" to the plan. "The interests of the individual to privacy and good reputation must be balanced against the interests of the state in avoiding the dangers and effects of drug abuse. This court must balance these rights. In so doing, we strike the balance in favor of the individual in circumstances such as are shown here. The interests of individual privacy and the right to a good reputation far outweigh the state's interest in abating drug abuse. The label of 'potential drug abuser' may become in time a self-fulfilling prophecy, and test results or the refusal to take the test could result in scape-goating." *Merriken v. Cressman,* 364 F.Supp. 913, Pa., 1974.

Q. TO WHOM DOES THE RIGHT TO AN EDUCATION AT PUBLIC EXPENSE BELONG?

A. Historically, two major "interests" have been considered where compulsory attendance and the right to a free education are the issue. These are the interests of the State on the one hand and those of the parent on the other. Recently, a third "interest" is being urged: the right of the child to have something to say about his own life. Such an interest is protected under the U.S. Constitution, it is argued, and the right to go to school is both a "liberty" and a "property" interest which cannot be denied without due process of law. Although this third interest has not gained much ground, it appears that were the schools to believe the Supreme Court when it held that children are "persons" under the Constitution, it would have to take into account that the child has a "protectable" interest which cannot be overlooked when school issues having constitutional implications are being litigated.

Q. IF PARENTS DEFAULT IN GIVING PROTECTION AND CUSTODY TO THE CHILD, WHAT ARE THE LEGAL IMPLICATIONS FOR THE COUNSELOR?

A. Both ethics and good sense dictate that the adult standing *in loco parentis* should assume the parental role in lieu of a state hearing on the matter. For this reason, it is becoming more and more common that the counselor or teacher may assume (in fact, must assume) the parental role, either as a surrogate parent or child-advocate in order to protect the interests of the child. In such matters as child placement in school, in evaluation of child progress, and in periodic review of student growth, the counselor should take a firm stand in representing the interests of the child.

Q. SUPPOSE ONE OF YOUR COUNSELEES COMMITS SUICIDE? CAN THE COUNSELOR BE HELD LEGALLY LIABLE?

A. It would depend upon the circumstances in each case. However, in a college case in which the counselor terminated the series of interviews believing that the freshman counselee was cured, and the girl committed suicide, the parents were unable to prove that it was the counselor's negligence which caused her to take her own life. Such a high standard of care, declared the court, would make of each counselor the guarantor of the life of all his counselees, an arbitrary and impossibly high standard of foreseeability beyond the reach of the ordinary parent.

Q. WHAT RIGHTS TO THE CHILD DOES THE NATURAL PARENT RETAIN EVEN THOUGH THE CHILD IS COMPULSORILY IN SCHOOL?

A. Parents still maintain control over the body, soul and mind of their own children, even though the child is temporarily in school under the compulsory attendance statute. That is, the parent may decide who, if anyone, shall provide medical attention to the child, and in what amount. Except to save the child's life, the counselor should refrain from taking any medical steps without the consent of the parent. Secondly, the parent retains control of the religious upbringing of his child. Where parents may object to certain practices in school on religious grounds (salute to the flag; sex education), the parents' wishes must be honored to the extent that the child's right to know is not hampered. Finally, the parent still retains control of the inner reaches of his child's mind, and may veto "brain-probing" tests and other sub-conscious devices in the public schools. However, the Supreme Court held that a parent may not veto corporal punishment for his child where it is tempered with due process procedures and used only as a last resort. He may request and receive a written account of corporal punishment together with the name or names of those adults who witnessed the punishment so inflicted.

Counseling Minors

Q. HISTORICALLY, WHAT HAS BEEN THE LEGAL STATUS OF CHILDREN?

A. Before the law, children throughout history have been looked upon as chattels of their parents, dependents, minors, persons of "tender" years, or as infants. Until the XXVI Amendment was ratified in 1971 giving 18 year olds the right to vote, the states tra-

ditionally held that those under 21 years of age were unable to think, do or decide for themselves. While the laws governing some rights of children have changed since that event, there are still vast areas of the law which tend to place restrictions on children's rights simply because of the belief that children are not capable of thinking, doing or deciding for themselves.

Q. IN TERMS OF THE LAW, WHAT DETERMINES THE LEGAL STATUS OF A PERSON?

A. To have legal rights, subjects of the state must be considered sufficiently mature to govern one's own affairs. In Western thought, a child has historically been considered to be an infant, a minor, a dependent, or one standing in need of supervision. In 1969, however, the Supreme Court ruled in the *Tinker* case that children are "persons" under our Constitution, and do not shed their constitutional rights at the schoolhouse gate. School officials are only now beginning to comprehend what the full implications of this ruling may be.

Q. WHEN ARE CHILDREN LEGALLY ENTITLED TO MAKE DECISIONS AFFECTING THEIR LIVES?

A. It all depends. The age of the child, his dependence on others, his relative stage of maturity, and other circumstances would govern court rulings on the subject. It is clear that historical restrictions once thought necessary to control and bring up children have been swept away by the courts and legislative action. One school of thought believes that children should be given all the freedom in school and out that they can safely handle. In concurring, Mr. Justice Douglas wrote in *Wisconsin v. Yoder*, 92 S.Ct. 526, 1972 that although the Amish farmer was being listened to in the case (filed to object having to attend school until age 16), no record was in evidence that the boy's wishes were being considered: "I think children are entitled to be heard. One may want to be a pianist or an astronaut. To do so he will have to break from the Amish tradition. If not, his whole life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the state gives the exemption which we honor today."

Q. WHAT LEGAL RIGHTS DO COLORADO 18 YEAR OLDS HAVE?

A. The states vary widely in the way they legislate rights for those citizens who have reached 18 years of age. Coloradoans 18 years

old can sign contracts, vote, obtain drivers licenses, and drink beer, but the beer must contain no more than 3.2 percent alcohol. They may marry without parental consent after age 18. They can leave home at 16, but do not attain full legal majority until age 21.

Q. DOES THE RIGHT OF A MINOR TO EMPLOY COUNSEL WHEN HIS/HER INTERESTS ARE HOSTILE TO PARENTS' INTERESTS "INSTANTLY EMANCIPATE" THE CHILD?

A. The point was at issue in *Wagstaff v. Superior Court*, 535 P.2d 1220, 1975 where the Alaska Supreme Court said, in part:

> Respondents (parents) argue that our holding (that a girl of 14 may employ an attorney when her interests are hostile to those of her parents) will instantly emancipate children and terminate the natural right of parents to guide and counsel them. It is urged that a "child should not lose his cloak of love, nurture, and guidance when he enters the halls of justice." In answer to this, it must be pointed out that in most instances the child would not be in court unless a serious problem in the parent-child relationship has developed. We assume that with the benefit of hearing arguments on both sides of the controversy, the court will be able to give substantial consideration to the need for parental love, nurture, and guidance, in deciding the future welfare of the child. (At 1227)

Q. AT WHAT AGE MAY A MINOR OBTAIN LEGAL COUNSEL?

A. In Colorado, there is no bar to obtaining legal counsel regardless of age. In Alaska, the supreme court held that a girl of 14 who was being tried as a "child in need of supervision" was held to have the right to hire her own attorney where her parents' interests were hostile to her own. Since the Supreme Court has held that "children are 'persons' under our Constitution, and do not shed their constitutional rights at the schoolhouse gate" (*Tinker*, 1969) it appears that the under-18 student may obtain the services of legal counsel whenever a fundamental right to life, liberty or property is at stake.

Q. WHEN IS A CHILD CONSIDERED LEGALLY "EMANCIPATED"?

A. Emancipation means the entire surrender of the right to care, custody and earnings of a minor child as well as a renunciation of parental duties. Emancipation can be *express*, as by voluntary

agreement of parent and child, or *implied*, from such acts and conduct as import consent, and it may be conditional or absolute, complete or partial.

Colorado law provides that parents may voluntarily emancipate a child under 18 by merely signing a statement to that effect.

A minor is deemed emancipated if he lives apart from his parents, is self-supporting and exercises general control over his life. (*Cohen v. Delaware*, 269 N.Y.S. 667, 1934).

Q. MAY THE COUNSELOR COUNSEL STUDENTS TO DEMONSTRATE AND OTHERWISE OPPOSE SCHOOL POLICIES?

A. No. The courts seem to be in agreement that such action by a teacher or counselor is unacceptable behavior on the part of employees who are hired to enforce board policy. In Illinois, a teacher advised his teenage students to demonstrate and walk out in order to obtain "student power." The teacher was dismissed following a hearing after he had been requested verbally by the superintendent to stop advising students to oppose rules and policies of the school system. When the teacher said that in the future he would conduct himself as he had in the past, the board then dismissed him. The court upheld his dismissal. *Vance v. Board of Education*, 277 N.E.2d 337, 1972.

Crime Investigation in the Schools

Q. CAN SCHOOL PERSONNEL SEARCH A STUDENT'S LOCKER WITHOUT A WARRANT?

A. The courts have consistently held that the principal (and presumably, other school personnel standing *in loco parentis* to the student) not only has the right but the duty to search student lockers for contraband. In so doing, one is following the rule that conduct and standard of care must be equal to that which the ordinarily prudent parent would display under the circumstances. This means that school personnel need not obtain a warrant to search a student's locker, since the locker belongs to the school, and the student is understood to have privacy as against his peers, but not against school officials acting in line of duty.

Q. MAY SCHOOL OFFICIALS SEARCH A STUDENT WHEN THERE IS REASON TO SUSPECT THAT HE/SHE HAS CONCEALED CONTRABAND?

A. Yes. In Georgia, the state Supreme Court upheld the right of an assistant principal to search a student on reasonable suspicion (bulging wallet) that he had some marijuana concealed on his person. The search disclosed marijuana, which was admitted into evidence. *State v. Young,* 216 S.E.2d 586 Ga. 1975.

Q. MAY SCHOOL PERSONNEL REQUIRE STUDENTS TO SUBMIT TO QUESTIONING BY POLICE?

A. No, the student has a right to remain silent. But school personnel may be held personally liable in damages where they act to deny a student his civil rights. "Children are given over to the custody of the school officials for one purpose only, and that is education in all its phases," said a New York judge. "The school has no authority to make children available for such purposes as questioning by the police."

Q. DOES A STUDENT HAVE THE RIGHT TO REMAIN SILENT WHEN ACCUSED OF WRONGDOING?

A. Yes, and such silence cannot be equated to guilt. The right to remain silent and not give testimony against onesself is protected in the Fifth Amendment. A student is legally entitled to tell his side of the story if he wishes, however. "One cannot be denied his right to remain silent merely because he is a student," ruled a judge recently. *Caldwell v. Cannady,* civil action, N.D. Texas, March 9, 1972. The more serious the charge, the more the student has the right to remain silent. In cases where criminal charges may result from the accusation, the student should be permitted to consult with an attorney before deciding not to testify against himself.

Q. WHAT IS MEANT BY "SUBSTANTIVE" DUE PROCESS OF LAW?

A. Due process of law has been interpreted by the Supreme Court to consist of two parts: 1) substantive and 2) procedural due process. *Substantive* due process is content-oriented, in contrast with *procedural* due process, which is method-oriented. Substantive due process may be further subdivided into a) the rule, and b) its application. Under a., the question to be asked is this: "Is the rule (of the school) fundamentally fair in the light of all the facts in the particular instance?" Under b., the question is equity — "Does the rule apply undiscriminately to one and all alike?" Thus, substantive due process is of the essence: "Is the school rule reasonable, fair, not arbitrary, or capricious, and does it discriminate against certain individuals in its application?" One

might have a fair rule (boys may not wear hair below the collar) but find that the rule in its application discriminates (against boys) in practice.

Q. WHAT IS MEANT BY "PROCEDURAL" DUE PROCESS OF LAW?

A. Procedural due process of law refers to the process by which a punishment is assessed or some kind of sanction applied to an individual by the state acting under color of state law. The Fourteenth Amendment protects the person against deprivation of life, liberty or property "without due process of law." In practice, this has come to mean two things: a) that no person shall be condemned unheard; and b) that every judge shall be free from bias. The guarantee protects individual citizens of all ages against arbitrary, capricious or illegal acts by state officials acting under the color of state law, by requiring that the rule itself, its application in practice, and the process by which the person is assessed the penalty are all based upon "fundamental fairness," which is the essence of the due process and equal protection clauses of the Amendment.

Grouping and Testing Children

Q. IS "TRACKING" ILLEGAL?

A. Not *per se*. Tracking, or ability grouping, is a system of assigning students to classes or groups according to their supposed intelligence, aptitude or achievement. Under certain conditions, tracking may lead to stigmatization, to "locking-in" some children, and in prejudicing school personnel and others against the student. Tracking itself is not illegal; what is illegal is grouping which denies due process of law or tends to stigmatize a student. *Hobson v. Hansen*, 269 F.Supp. 501, D. C., 1967. When a charge is made that grouping practices discriminate, the school officials must show that their actions are constitutionally sound. Ordinarily, the evidence of staffing (hearing) where all data are thoroughly discussed before initial assignment to a group, and periodic review of the student's status is routinely provided, the practice of tracking is not illegal *per se*.

Q. TO WHAT EXTENT MAY GIRLS AND BOYS BE SEPARATED FOR INSTRUCTIONAL PURPOSES?

A. Title IX guidelines permit separation of the sexes during sex education classes if the district board wishes to do so. Also, provi-

sion is made for separation of males and females in contact sports, in physical education classes and grouping of students by ability. Equal opportunities must be made available for males and females to participate in intramural, interscholastic and intercollegiate athletics. Title IX also allows separate teams in those sports in which competitive skill is the basis for selecting team members. It allows separate teams in contact sports, but does not require them. Dollar-for-dollar matching expenditures for each sex in sports is not required. Exempted from the provisions of Title IX are all military schools and religious schools whose tenets may conflict with the law.

Q. MAY A DISTRICT REQUIRE HIGHER ADMISSION STANDARDS FOR GIRLS THAN FOR BOYS?

A. No, such distinctions amount to sexual discrimination. In San Francisco, the district, in order to balance boys and girls in the student body, required male applicants to have a 3.0 average, while female applicants were required to show a 3.25 average to gain admission to the "academic" high school. Since the board was unable to prove that a balance of the sexes furthers the goals of better academic education, the court held that it could not operate under a double standard, but must use the same criteria for all those whom it admitted. *Berkelman v. S.F. Unified School Dist.*, 501 F.2d 1264, 1974.

Q. ARE CHILDREN WITH SPECIAL LEARNING DIFFICULTIES ENTITLED TO SPECIAL ATTENTION?

A. Yes. Several courts have held that children with behavioral problems, language deficiencies, those who are mentally retarded, emotionally disturbed or hyperactive have the right to be considered as individuals in shaping their learning experiences. In *Lau v. Nichols*, 94 S.Ct. 786, 1974, Chinese speaking children in San Francisco were held to be entitled to special English instruction so they might understand what was being taught in the public schools. "Where inability to speak and understand English excludes national origin-minority groups from effective participation in the educational program offered by the district," said the Supreme Court, "the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to those students." Due process requires a hearing before such students are placed or reassigned, and they are also entitled to periodic review of their progress so that they will not become locked into a certain track or program. *Mills v. Bd. of Educ.*, 348 F.Supp. 866, D.C., 1972.

Q. LEGALLY, WHAT IS "FUNCTIONAL EXCLUSION" OF A CHILD FROM SCHOOL?

A. The term "functional exclusion" was coined by civil rights attorneys to describe a condition where the child is present physically in school, but is unable to profit from the environment in which he has been placed by the school. While meeting the compulsory attendance law in form, the child is being denied the spirit of the statute when he/she is unable to succeed in a meaningful way. Courts have held in some cases that school officials are under an affirmative duty to provide a climate and type of instruction relevant to the child's needs at the moment. Thus, the child who is "mainstreamed" into the regular classroom but is not receiving specialized instruction fitted to his needs may be denied equal protection of the laws, and is legally entitled to a positive act on the part of school officials in providing alternative instructional methods more directly related to his educational needs of the moment.

Q. MAY SCHOOLS CREATE SEPARATE "ADJUSTMENT" CLASSES FOR CHILDREN WHO MAY HAVE DIFFICULTY FUNCTIONING IN REGULAR CLASSROOMS?

A. Yes, but these separate groups must not become permanent assignments for any child. So long as the school officials can show through concrete evidence that such an assignment provides the child in question with a better chance to succeed than before, the courts will tend to protect your right to separate children for adjustment purposes. If the benefits to be gained by such actions outweigh the possible stigma, then school officials can reasonably be expected to be upheld. Here it seems logical to work closely with the parents in reaching decisions regarding temporary assignment to adjustment classes outside the regular classroom to show that such actions are in the best interests of the child.

Q. COULD A COUNSELOR BE HELD LIABLE IN DAMAGES WHERE TESTING MIGHT BE DISCRIMINATORY?

A. Yes, it is possible. Counselors are assumed to know the validity and reliability of tests being used to group students into instructional units. Where the counselor knew, or reasonably should have known that what was being done to the child might be expected to deprive that child of a civil liberty, the counselor may be held personally liable under the Civil Rights Act of 1871 (42 U.S.C.§1983).

Q. ARE "CULTURE FREE" TESTS AVAILABLE?

A. Probably not. A school which gives a test must be prepared to show that the test is "culture free" insofar as that particular group being tested is concerned. When testing results in someone being labeled, and such a label could remain with that person for the remainder of their lives, the margin of error must be nil, according to one federal judge. *Merriken v. Cressman*, 364 F.Supp. 913, Pa. 1974.

Q. WHAT FOUR HURDLES MUST THE SCHOOL CLEAR IN ORDER TO DEMONSTRATE THAT ITS GROUPING PRACTICES ARE CONSTITUTIONALLY SOUND?

A. In grouping students, the courts have said that there are four hurdles, and that the burden of proof is on the school to demonstrate that it is not discriminating in its grouping of students: (1) schools must demonstrate that the test being used to group students has *differential* validity, that is, it has separate validation scores for all minorities on which it is being used; (2) schools must bring the level of confidence up to the .05 level, which is the same as saying that the probability of obtaining the same test results through mere chance is no greater than one in twenty; (3) schools must demonstrate that the testing procedure contains an adequate sample; and (4) schools must demonstrate that the test has been administered to all the testees under uniform testing conditions which correlate with the test conditions used in validating the test being used. *Griggs v. Duke Power Co.*, 401 U.S. 424, 1971.

Child Abuse and Neglect

Q. WHAT SHOULD THE COUNSELOR DO IN CASES OF CHILD ABUSE?

A. Colorado law requires that any person who has reasonable cause to believe that a child has been subjected to abuse shall report the incident to the proper law enforcement agency. Abuse means any case in which the child exhibits evidence of bruising, bleeding, malnutrition, sexual molestation, burns, fracture, sub-dermal hematoma, soft tissue swelling, failure to thrive, or death, and the explanation for the condition is at such variance with the degree and type of injury as to indicate a non-accidental injury. The law enforcement agency shall report in turn to the juvenile court after taking the appropriate steps for the child's protection. The Department of Welfare shall investigate the alleged abuse and

offer social services for the protection of the child and the preservation of the family.

Any person making a non-malicious report in a child abuse case, or taking part in a proceedings shall be *immune* from any *liability,* civil or criminal, that might be incurred.

Q. DOES A COUNSELOR INCUR POSSIBLE LIABILITY FOR DAMAGES UNDER THE CIVIL RIGHTS ACT OF 1871?

A. Although remote, there is such a possibility. Liability attaches to anyone acting on behalf of the state who knows or reasonably should know that what he or she is doing will deprive another of a civil rights. In *Wood v. Strikland,* 95 S.Ct. 992, Ark. 1975 the Supreme Court of the United States held that school "officials" may be held personally liable, as individuals, where they deprive someone of a civil right under color of state law. If a teacher or counselor knew of a child abuse case, and failed to report such to the proper authorities, liability might accrue on the grounds that the child had a right to be represented before the law, but was denied that right by some act or failure to act of a school employee.

Q. WHAT IS THE PENALTY FOR FAILURE TO REPORT CHILD ABUSE AND NEGLECT?

A. There is a possible civil liability for willful failure to report a child abuse case to the authorities. This arises under the legal doctrine of negligence — a) a duty owed to the child by the counselor; b) a breach of the duty owed; and c) the breach is the proximate cause of an injury to the child.

Q. IS CHILD ABUSE EXTENSIVE IN THE UNITED STATES?

A. Yes, and it is on the increase. An estimated one million American children suffer physical abuse or neglect each year, and at least one in 500 of the young victims die from their mistreatment. The Department of Health, Education and Welfare calls it "a national epidemic and a very serious social problem." Some 2,000 children a year die from circumstances associated with abuse or neglect, according to the HEW report.

Q. IS FEDERAL LAW INVOLVED IN CHILD ABUSE AND NEGLECT?

A. Yes. On January 31, 1974, the Child Abuse Prevention and Treatment Act was signed into law. The major thrust of this legislation

is to provide funding for promising efforts to prevent, identify, and treat child abuse and neglect. (P.L. 93-247). Another purpose of the Act is to provide technical assistance and other resources via a new National Center on Child Abuse and Neglect in the Department of HEW, located in the Office of Child Development.

Required Consent

Q. MUST A PREGNANT GIRL UNDER 18 IN COLORADO OBTAIN PERMISSION OF HER PARENTS FOR AN ABORTION?

A. In February, 1975 (*Foe v. Vanderhoof*, 389 F.Supp. 947, Colo. 1975) a federal district court declared unconstitutional the Colorado statute requiring parental consent for an abortion for any girl under 18 who was unmarried. Plaintiff, 16, was not married, was pregnant, and had a five-months' old child. She sought to have the statute set aside as an invasion of her privacy. In granting her request, the court noted that the girl was "on her own", had consulted medical and social experts with respect to the consequences of her action, and had expressed a desire to continue her education. The statute was overbroad, said the court, no compelling state interest had been demonstrated by the State that would justify intrusion into a fundamental area of privacy, and the plaintiff had standing to sue even though she was below the age of 18.

Q. MAY PARENTS OF A MINOR COMPEL THEIR PREGNANT DAUGHTER TO SUBMIT TO AN ABORTION IF SHE WANTS TO KEEP HER BABY?

A. This question was raised in 1972 in Maryland (*In re Smith*, 295 A.2d 238). In upholding the daughter's right to decide the question on her own, the court said, "Not only do minors have the right to consent to their own abortions but they also have the right to withhold that consent over the objections of their natural parents." (*Id.*, 246).

Q. WHAT DID THE SUPREME COURT OF THE U.S. SAY ABOUT ABORTION?

A. In *Roe v. Wade*, 93 S.Ct. 705 and *Doe v. Bolton*, 93 S.Ct. 739, 1973, the Supreme Court held that the decision of a woman to terminate her pregnancy involved the exercise of the fundamental right of individual privacy, protected by the Fourteenth Amendment's due process clause, and that this decision could be abridged only by

narrowly drawn legislative enactments designed to serve compelling state interests. During the first tri-mester, the decision to terminate the pregnancy is that of the woman and her doctor. As the time extends past viability, the state's interests become more compelling, since the state is interested in fetal life. But none of the plaintiffs in these two cases were minors. It remained therefore for each of the states to decide in what way it will protect its own interests. See *Foe v. Vanderhoof*, 389 F.Supp. 947, 1975, in which the court declared the Colorado statute requiring parental consent for an abortion for a girl under 18 to be unconstitutional as an invasion of the minor's privacy.

Q. WHAT ARE THE RIGHTS OF THE PREGNANT STUDENT TO REMAIN IN SCHOOL?

A. The courts are in general agreement that an unmarried mother who is still in school may not be discriminated against simply because of her pregnancy. At least three options are open to the schools: 1) to allow the girl to continue on in the regular classroom; 2) to provide classes separate and apart for those who are expectant mothers; and 3) to provide some form of homebound teaching in lieu of regular classroom instruction. In at least one case, a girl who challenged being required to stay at home and take homebound instruction was successful in getting the board to permit her to continue in the classroom and graduate with her class.

Q. WHAT COUNSELING IS PERMITTED ON THE USE AND MISUSE OF DRUGS?

A. Colorado law requires instruction in the adverse effects of tobacco and alcohol on the human system. By extension, it might be reasoned that instructions in the possible ill effects of drugs on the system might be introduced even in the elementary grades.

Q. MUST MINORS OBTAIN CONSENT OF PARENT OR GUARDIAN FOR TREATMENT OF DRUG ADDICTION IN THE STATE OF COLORADO?

A. No. C.R.S. 41-2-12, 1973, provides that any licensed physician upon consultation by a minor as a patient, with the consent of the minor patient, may examine, prescribe for, and treat such minor patient for addiction to the use of drugs, all without the consent of or notification to the parent, parents, or legal guardian of such

minor, or to any other person having custody of such minor patient. The physician shall incur no civil or criminal liability by reason of having made such an examination or prescription or having rendered such treatment, but such immunity shall not apply to any negligent acts or omissions by the physician or any person acting pursuant to his direction.

Q. ARE UNMARRIED MINORS ENTITLED TO RECEIVE INFORMATION AND CONTRACEPTIVE DEVICES IN COLORADO?

A. Yes. C.R.S. 25-6-102, 1971 makes such information and devices available to married and unmarried alike regardless "of sex, age, race, income, number of children, marital status, citizenship or motive."

Q. AT WHAT AGE MAY MINORS IN COLORADO BE FURNISHED BIRTH CONTROL DEVICES AND INFORMATION ON HOW TO PREVENT CONCEPTION?

A. A Colorado statute dealing with family planning and birth control (C.R.S. 25-6-102, 1971) provides that "all medically acceptable contraceptive procedures, supplies, and information shall be readily and practicably available to each person desirous of the same regardless of sex, age, race, income, number of children, marital status, citizenship or motive." The intent of the legislature in the statute was to check population growth, among other things, and to make available to all citizens information and devices for this purpose. Dissemination of medically acceptable contraceptive information by duly authorized persons at schools, and at other agencies of the state "is consistent with public policy," according to the statute (C.R.S. 25-6-102(8)).

Q. MAY A MEDICAL DOCTOR TREAT A MINOR IN COLORADO FOR VENEREAL DISEASE WITHOUT THE CONSENT OF THE PARENT OR GUARDIAN?

A. Yes. A Colorado statute (C.R.S. 25-4-402(4), provides that "any physician, upon consultation by a minor as a patient and with the consent of the minor patient, may make a diagnostic examination for venereal disease and may prescribe for and treat such minor patient for venereal disease without the consent of or notification to the parent or guardian of such minor patient or to any other person having custody of such minor patient." The statute further saves harmless the physician from civil or criminal liability for having treated such minor.

Q. DOES THE PHYSICIAN HAVE TO REPORT INCIDENCES OF VENEREAL DISEASE BY NAME AND ADDRESS?

A. No, unless the physician has reason to believe that the person so afflicted shall "be a menace to the health of any other person," in which case the physician may without liability of libel and slander report such information to a health officer or to the spouse of the patient, or to the person, if known, to whom the patient is then engaged to be married, or in the case of a minor patient to the parent, the guardian, or any other person having custody of such minor patient.

Title IX and the Counselor

Q. WHAT IS TITLE IX? DOES IT APPLY TO PUBLIC SCHOOLS?

A. Title IX of the Federal Education Amendment of 1972 says that "No person ... shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." By July 21, 1976, every institution covered by Title IX had to have at least the following accomplished: complete self-evaluation of its current policies and practices in treating students and its employment of both academic and non-academic personnel, modified policies and practices to meet Title IX requirements, remedial steps to eliminate discrimination in the institution, and to accompany all applications for federal financial assistance with assurances of compliance with Title IX.

Q. ARE GRIEVANCE PROCEDURES IN WRITING A PART OF TITLE IX COMPLIANCE REQUIREMENTS?

A. Yes. Grievance procedures providing for resolution of both student and employee complaints shall be adopted and published as a part of compliance with Title IX regulations. (See Appendix F for a sample Student Grievance Form).

Q. WHAT TREATMENT OF STUDENTS MUST BE PROVIDED UNDER TITLE IX?

A. All schools receiving federal financial assistance must treat their admitted students without discrimination on the basis of sex. These categories apply: 1) course offerings: discrimination in ad-

mitting or treating students in course offerings on the basis of sex is prohibited; 2) health education: while not required to conduct sex education classes, if such classes are offered, students may not be separated by sex except when the materials and discussions deal exclusively with human sexuality; 3) physical education: separation by sex is permissible in contact activities involving bodily contact; 4) comparable facilities: while separate housing on the basis of sex is possible, the recipient may not allow different fees, rules or benefits; housing must be proportionate to the number of students of each sex that apply; separate toilet, locker room and shower facilities may be separate but comparable; 5) athletics: may be offered in either separate or mixed teams in cases where competitive skills are involved. 6) other services, such as employment services, counseling, and similar considerations are not to be discriminatory in nature.

Q. WHAT SPECIAL PRECAUTIONS MUST BE TAKEN IN COUNSELING STUDENTS UNDER TITLE IX REGULATIONS?

A. A recipient of federal financial assistance shall not discriminate against a student on the basis of sex in the counseling of such students. Testing and other materials must not treat students differently on the basis of sex. The district is required to adopt and publish internal procedures for the elimination of sex discrimination in all counseling functions under the direction of the school. These procedures should assure that counseling tests or methods do not result in a disproportionate number of members of one sex in any particular course of study or classification. Where a disproportionate number of one sex is thus affected, the district must show that it is not the result of discrimination on the basis of sex in counseling or appraisal devices being used by counselors.

APPENDIX A

CODE OF ETHICS OF THE AMERICAN SCHOOL COUNSELORS ASSOCIATION

AMERICAN SCHOOL COUNSELOR ASSOCIATION
1607 New Hampshire Avenue, N.W.
Washington, D.C. 20009

1. Responsibilities of the school counselor stem from these basic premises and basic tenets in the counseling process.
   A. Each person has the right to dignity as a human being.
      1. without regard to race, sex, religion, color, socio-economic status.
      2. without regard to the nature and results of behavior, beliefs and inherent characteristics.
   B. Each person has the right to individual self-development.
   C. Each person has the right to self-direction and responsibility for making decisions.
   D. The school counselor, equipped with professional competency, an understanding of the behavioral sciences and philosophical orientation to school and community, performs a unique, distinctive and highly specialized service within the context of the education purpose and structure of the school system. Performance of this rests upon acquired techniques and informed judgment which is an integral part of counseling. Punitive action is not part of the counseling process. The school counselor shall use these skills in endeavoring constantly to insure that the counselee has the afore-mentioned rights and a reasonable amount of the counselor's time.
   E. The ethical conduct of the school counselors will be consistent with the state regulations.
   F. The school counselor may share information gained in the counseling process for essential consultation with those appropriate persons specifically concerned with the counselee. Confidential information may be released only with the consent of the individual except when required by court order.

I. **Principal responsibilities of the school counselor to PUPILS**

A. The school counselor

1. has a principal obligation and loyalty to respect each person as an unique individual and to encourage that which permits individual growth and development.
2. must not impose consciously his attitudes and values on the counselee though he is not obligated to keep his attitudes and values from being known.
3. should respect at all times the confidences of the counselee; should the counselee's condition be such as to endanger the health, welfare and/or safety of self or others, the counselor is expected to report this fact to an appropriate responsible person.
4. shall be knowledgeable about the strengths and limitations of tests; will share and interpret test information with the counselee in an accurate, objective and understandable manner to assist the counselee in self-evaluation.
5. shall assist the counselee in understanding the counseling process in order to insure that the persons counseled with will understand how information obtained in conferences with the counselor may be used.

II. **Principal responsibilities of the School Counselor to PARENTS**

A. The school counselor

1. shall work with parents so as to enhance the development of the counselee.
2. shall treat information received from the parents of a counselee in a confidential manner.
3. shall share, communicate and interpret pertinent data, and the counselee's academic progress with this parents.
4. shall share information about the counselee only with those persons properly authorized to receive this information.

III. **Principal responsibilities of the School Counselor to FACULTY, ADMINISTRATION AND COLLEAGUES**

A. The school counselor

1. shall use discretion, within legal limits and requirements of the state in releasing personal information about a counselee to maintain the confidences of the counselee.
2. shall contribute pertinent data to cumulative records and make it accessible to professional staff (except personal factors and problems which are highly confidential in nature.)

3. shall cooperate with colleagues by making available as soon as possible requested reports which are accurate, objective, meaningful and concise.
4. shall cooperate with other pupil personnel workers by sharing information and/or obtaining recommendations which would benefit the counselee.
5. may share confidential information when working with the same counselee, with the counselee's knowledge and permission.
6. must maintain confidentiality even though others may have the same knowledge.
7. shall maintain high professional integrity regarding fellow workers when assisting in problem areas related to actions, attitudes and competencies of faculty or colleagues.

IV. **Principal responsibilities of the School Counselor to SCHOOL AND COMMUNITY**

A. The school counselor

1. shall support and protect the educational program against any infringement which indicates that it is not to the best interest of the counselee or program.
2. must assume responsibility in delineating his role and function, in developing educational procedure and program, and in assisting administration to assess accountability.
3. shall recommend to the administration any curricular changes necessary in meeting valid educational needs in the community.
4. shall work cooperatively with agencies, organizations and individuals in school and community which are interested in welfare of youth.
5. shall, with appropriate release, supply accurate information according to his professional judgment to community agencies, places of employment and institutions of higher learning.
6. should be knowledgeable on policies, laws, and regulations as they relate to the community, and use educational facilities accordingly.
7. shall maintain open communication lines in all areas pertinent to the best interest of counselees.
8. shall not accept remuneration beyond contractual salary for counseling any pupil within the school district. The counselor shall not promote or direct counselees into counseling or educational programs which would result in remuneration to the counselor.
9. shall delineate in advance his responsibilities in case of any confrontation and have an agreement which is sup-

ported by the administration and the bargaining agency.

V. **Principal responsibilities of the School Counselor to SELF**
   A. The school counselor
      1. should continue to grow professionally by
         a. attending professional meetings
         b. actively participating in professional organizations
         c. being involved in research
         d. keeping abreast of changes and new trends in the profession and showing a willingness to accept those which have proved to be effective.
      2. should be aware of and function within the boundaries of his professional competency.
      3. should see that his role is defined in mutual agreement among the employer, students to be served, and the counselor. Furthermore, this role should be continuously clarified to students, staff, parents and community.

VI. **Principal responsibilities of the School Counselor to the PROFESSION.**
   A. The school counselor
      1. should be cognizant of the developments in his profession and be an active contributing participant in his professional association — local, state and national.
      2. shall conduct himself in a responsible manner and participate in developing policies concerning guidance.
      3. should do research which will contribute to professional and personal growth as well as determine professional effectiveness.
      4. shall under no circumstances undertake any group encounter or sensitivity session, unless he has sufficient professional training.
      5. shall, in addition to being aware of unprofessional practices, also be accountable for taking appropriate action to eliminate these practices.

Adopted by the ASCA Governing Board in October 1972.

APPENDIX B

DUE PROCESS STANDARDS FOR IDENTIFICATION, EVALUATION AND PLACEMENT OF CHILDREN

From: Alan Abeson, Nancy Bolick, and Jayne Hass, *A Primer on Due Process* Reston, Va.: Council for Exceptional Children, 1975, pp. 20-21.

The following are considered in order to meet minimum due process standards for identifying, evaluating and placing handicapped children:

1. Written notification before evaluation. In addition, parents always have the right to an interpreter/translator if their primary language is not English.
2. Written notification before change in educational placement.
3. Periodic review of educational placement.
4. Opportunity for an impartial hearing including the right to:
    a. Receive timely and specific notice of such hearing
    b. Review all records
    c. Obtain an independent evaluation
    d. Be represented by counsel
    e. Cross examine
    f. Bring witnesses
    g. Present evidence
    h. Receive a complete and accurate record of the proceedings
    i. Appeal the decision.
5. Assignment of a surrogate parent for children when:
    a. The child's parent or guardian is not known
    b. The child's parents are unavailable
    c. The child is a ward of the state.
6. Access to educational records.

Educational administrators, teachers and parents should work together to achieve the following conditions that enhance informal review:

1. Parent involvement in all decisions that affect the educational programming of their child.

2. Parent and professional awareness of their rights and responsibilities and those of the child.

3. Access by parents to all levels of the educational hierarchy and system.

4. Carefully developed administrative procedures that are written, codified, and made known to all involved in the process.

* Each district will be expected to develop its own particular guidelines to implement these standards.

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APPENDIX C

SERVICE ORGANIZATIONS HELPFUL TO COUNSELORS

American Civil Liberties Union
of Colorado
1711 Pennsylvania Street
Denver, Colorado 80203

American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

American Humane Association
Children's Division
P. O. Box 1266
Denver, Colorado 80201

American School Counselors Association
1607 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Center for Law and Education
Larsen Hall, Harvard University
14 Appian Way
Cambridge, Massachusetts 02138

The Children's Defense Fund
1746 Cambridge Street
Cambridge, Massachusetts 02138

Education Commission of the States
1860 Lincoln Street
Denver, Colorado 80203

Lawyers' Committee for Civil Rights
Under Law
733 Fifteenth St., N.W.
Washington, D.C. 20005

National Center for the Prevention
of Child Abuse and Neglect
1001 Jasmine Street
Denver, Colorado 80220

Community Relations Service
U.S. Department of Justice
1531 Stout Street, Suite 401
Denver, Colorado 80202

National Committee for Citizens
in Education
Wilde Lake Village Green
Columbia, Maryland 21044
1-800-NET-WORK

National Committee for Prevention
of Child Abuse
111 East Wacker Drive
Chicago, Illinois 60601

Parents Anonymous
2930 West Imperial Highway
Inglewood, California 90303

Public Education Religion
Studies Center
Wright State University
Dayton, Ohio 45431

Colorado Civil Rights Commission
312 State Services Building
1525 Sherman Street
Denver, Colorado 80203

Equal Educational Opportunity Unit
Regional Office of Education
1961 Stout Street
Denver, Colorado 80202

Colorado Department of Education
201 E. Colfax Avenue
Denver, Colorado 80203

TO WRITE MAJOR NETWORKS ABOUT THEIR PROGRAMS

ABC 1330 Avenue of the Americas
New York, New York 10019

CBS 51 West 52nd Street
New York, New York 10019

NBC 30 Rockefeller Plaza
New York, New York 10020

PBS 485 L'Enfant Plaza, West, S.W.
Washington, D.C. 20024

APPENDIX D

TABLE OF CASES

	Page
Baker v. Owen, 395 F.Supp. 294, N.C. 1975, affirmed, U.S.S.Ct., October 20, 1975	28-9
Baughman v. Freienmuth, 478 F.2d 1345, Md. 1973	20
Berkelman v. San Francisco Unified School District, 501 F.2d 1264, Cal. 1974	40
Blair v. Union Free School District, 324 N.Y.S.2d 222, 1971	9, 10
Brenden v. Ind.Sch.Dist., 477 F.2d 1292, Minn. 1973	23
Brown v. Board of Education, City of Topeka, 347 U.S. 483, Kans. 1954	1-2, 5, 23
Bunger v. Iowa H.S.Ath.Ass'n., 197 N.W.2d 555, 1972	26
Caldwell v. Cannady, N.D. Texas, March 9, 1972	38
Coe v. Gerstein, 376 F.Supp. 695, Fla. 1973	20
Cohen v. Delaware, 269 N.Y.S. 667, 1934	37
Davis v. Meek, 344 F.Supp. 298, Ohio 1972	23
Dixon v. Alabama, 294 F.2d 150, cert. den., 368 U.S. 930, 1961	2
Doe, Peter W., v. San Francisco School District	22
Doe v. Bolton, 93 S.Ct. 739, Ga. 1973	44
Eisenstadt v. Baird, 405 U.S. 438, 1972	20
Engel v. Vitale, 370 U.S. 421, N.Y., 1962	2
Foe v. Vanderhoof, 389 F.Supp. 947, Colo. 1975	20, 44, 45
Gault, In re, 87 S.Ct. 1428, Ariz. 1967	18, 21
Gilpin v. Kansas St.H.S.Act.Ass'n., 377 F.Supp. 1233, 1974	23
Goldin v. Bd. of Education, 357 N.Y.S.2d 867, 1974	10
Goss v. Lopez, 95 S.Ct. 729, Ohio 1975	2, 27
Griffith v. Bd. of Educ., 352 N.Y.S.2d 214, 1974	4
Griggs v. Duke Power Company, 401 U.S. 424, 1971	42
Hobson v. Hansen, 269 F.Supp. 401, D.C., 1967	39
Hortonville School Dist. v. Hortonville Tea.Ass'n., cert. granted, 74 L.W. 3200, 1975, decided June 17, 1976	5
Lau v. Nichols, 94 S.Ct. 786, CA 1974	40
Lee v. Macon County Bd. of Educ., 490 F.2d 458, 460, Ga. 1974	25
Lindsey v. The People, 66 Colo. 343, 1919	19
Lippincott v. Lippincott, 128 A.2d 254, 1925	21
Lopez v. Luginbill, 483 F.2d 486, N.Mex., 1973	9
Merriken v. Cressman, 364 F.Supp. 913, Pa. 1974	33, 42
Mills v. School Dist., D.C., 384 F.Supp. 866, D.C. 1972	40
Minorics v. Bd. of Educ., N.J. Comm. Dec., 1972	26
Nader v. General Motors Corp., 307 N.Y.S.2d 647, 1970	9

Penasco v. Lucero, 526 P.2d 825, 827, N.Mex. 1974	4
People v. Hirst, 106 Cal.Rptr. 815, 1973	27
Pickering v. Board of Education, 391 U.S. 563, Ill. 1968	2
Ritacco v. Norwin Sch.Dist., 361 F.Supp. 930, Pa. 1973	23
Rodriguez v. San Antonio S.Dist., 406 U.S. 1, Tx. 1973	21-2, 23
Roe v. Wade, 93 S.Ct. 705, Tx. 1973	44
Romans v. Crenshaw, 354 F.Supp. 868, Tx. 1972	22-3
Rugg v. McCarty, 476 P.2d 753, Colo. 1970	9
St. Ann v. Palisi, 405 F.2d 423, La. 1974	32
Scoma v. Chicago Bd. of Educ., 391 F.Supp. 452, Ill. 1974	32
Smith, In re, 295 A.2d 238, Md. 1972	44
State v. Young, 216 N.E.2d 586, Ga. 1975	38
Tinker v. Des Moines School Board, 393 U.S. 503, Iowa, 1969	2, 35, 36
Vance v. Bd. of Education, 277 N.E.2d 337, Ill. 1972	37
Wagstaff v. Superior Court, 535 P.2d 1220, Alaska, 1975	36
Wexell v. Schott, 276 N.E.2d 735, Ill. 1971	29
Wisconsin v. Yoder, 92 S.Ct. 526, 1972	35
Wood v. Strickland, 95 S.Ct. 992, Ark. 1975	3, 28, 43

APPENDIX E

EASY REFERENCE INDEX

AIMS
- of guidance and counseling, 18
- of this monograph, 1-2

ATTENDANCE
- compulsory attendance act, 7, 27
- parental rights, 34
- students' rights in school, 34

ATTORNEY
- civil rights attorneys, 41
- counselor as own, 7
- need for an, 1
- organizations of, 55-57
- right to an attorney, 27-28
- sources of services, 7

BOARDS OF EDUCATION
- affirmative duty, 41
- authority to operate schools, 5
- damages, liability for, 24-25
- loitering rules, 26-27
- open records, 15-16
- seriousness of offense, 28
- testing of children, 42
- upgrading of counselors, 6

BUCKLEY AMENDMENT, 13-18

CHILD ABUSE AND NEGLECT
- as a problem, 3
- CHINS defined, 32
- counselor and, 42-44
- custody problems, 3
- penalties for, 43
- search and seizure, 38

CHILDREN
- civil rights of, 18
- Code, in Colorado, 18, 29-32
- delinquent, 19, 30
- double standard for, 18, 21, 40
- educationally deprived, 8
- grouping of, 39-42
- "guests", 5
- history of rights of, 18
- infants, 21
- police involvement with, 31
- special learning needs, 40

CIVIL RIGHTS
- at certain age, 25
- Civil Rights Act of 1871, 8, 24, 43
- movement, 2
- of children, 18, 35
- of student, 1-2, 3
- of teachers, 1
- penalties for vilation of, 24-25
- to a good reputation, 11
- to go to school, 21
- to privacy, 10, 33, 38
- to treatment for venereal disease, 46

COLORADO
- child abuse law, 1, 42
- Children's Code, 29-32
- compulsory attendance act, 27
- confidentiality of counselor, 9
- Constitution, 22
- counselors, 1
- Department of Education, 7
- drug law, 45-46

family planning statute, 46
law on contraceptives, 46
law on emancipation, 37
open records law, 13
tenure in, 4

COMMUNICATIONS
distinguished, from confidentiality, 11
privileged, 2-3

CONFIDENTIALITY
Judge Ben Lindsey, 18-19
problem of, 3

CONGRESS
Acts of the, 2
open records, 13-18

CONSTITUTION
children, as persons under, 2, 33
liberty under, 21
privacy under, 20
property rights under, 22

CORPORAL PUNISHMENT
assault and battery, 32
parental right to veto, 28

COUNSELING
code of ethics, 49-52
culture-free tests and, 42
deciding for oneself, 25
Judge Ben Lindsey and, 18-19
on contraceptives, 46
on drug addiction, 45
on venereal disease, 46
philosophy of, 8, 18-19
records, 13-18
under Title IX, 48
where parental failure, 33

COUNSELOR
code of ethics, 6, 10, 49-52
as enforcer, 8
confidentiality, 8-10
in court, 1
in loco parentis, 3, 7
intent of, 12
legal status of the, 6
liability of the, 5, 8, 34
malpractice suits, 4
not an administrator, 4
open records and the, 13-18
personal liability, 1
police and the, 37-39
privileged communications, 11-13
release of information, 9
responsibilities of the, 49-52
roles of the, 4, 6, 8, 25, 33
testing and the, 41
upgrading the, 6
verbal chastisement by, 29

DEFAMATION
as a problem in schools, 3
defined, 12
libel, 2, 11
of homosexual, 12
slander, 2, 11

DISCIPLINE
as a problem in schools, 3
by lowering grades, 26
in loco parentis role, 7
expulsion, 27
suspension, 27

DISCRIMINATION
adjustment classes, 41
by sex, 23-24
functional exclusion as, 41
in testing, 41-42

DOUGLAS, WILLIAM O., 35

DRUGS
as a problem, 3
drug abuse, 32-33
drug addiction, 45-46
drug counseling, 45

DUE PROCESS OF LAW
and boards of education, 3, 28, 43
guilt by association, 26, 32

in corporal punishment, 28
in expulsion, 3, 27-28
procedural due process, 39
standards, double, 2, 21
standards, pupil placement, 53-54
substantive due process, 38-39

EQUAL PROTECTION OF THE LAWS
constitutional rights under, 2
harrassment as, 9
in schools, 23

EXPULSION
from school, 25-27, 28, 43
of college students, 2

EXTRA-CURRICULAR ACTIVITIES
and married students, 22-23
and pregnant students, 20

FIRST AMENDMENT RIGHTS
age at which obtained, 25
minors' rights to, 20
printed materials, 19-20

FIRST AMENDMENT RIGHTS
age at which obtained, 25
minors' rights to, 20
printed materials, 19-20

FOURTEENTH AMENDMENT RIGHTS
liability under, 8
lbiberty, 21
property, 22
right to attend school, 2

FREEDOM OF SPEECH
teachers' rights under, 2

INFORMATION
open records and, 13-18
release of, 3, 9

LADD, EDWARD T., 25

LAW
case law, 2
common law, 2, 5
defined, 2
knowledge of, 7
types of, 2

LINDSEY, JUDGE BEN, 18-19

MINORS
contraceptives and, 3
counseling of, 37-
pregnancies among, 3
venereal disease and, 3

NASSP,11

PARENTS
and Children's Code, 29-32
child treatment, 34-35
counselor's responsibility to, 50
guardian ad litem, 31-32
home instruction, 32
informed consent of, 32-33
involvement of, 53, 54
mental anguish of, 10
names of, obtaining, 8
normal, prudent, 8, 37
open records, and the 15-16
relations with school, 32-34
religious rights, 35
retained control, of child, 34
right to an education, 33
suits for damages by, 5
veto of corporal punishment by, 28

PROPERTY RIGHTS
an "interest" of student, 33
by association, 26, 32
not absolute, 21
to attend school, 2

RECORDS
Buckley Amendment, 13-18
correction of, 16, 31
handling of, 3

open records, 13-18
release of, 16
right to inspect, 15
third party access to, 14

RELIGION
and school attendance, 35
neutrality of state, 2

STATE BOARD OF EDUCATION
membership, ii
rulings of, 2

STRIKES
illegality of, by teachers, 5

STUDENTS
abortions for, 20
and police, 38
counselor's responsibility to, 50
due process and the, 21
emancipation of, 3, 25
health of, 3
pregnancy, 20

STUDENTS' RIGHTS
against search, 37-38
and age, 25
to abortion, 44
to be emancipated, 36-37
to contraceptive information, 46
to due process of law, 21
to employ counsel, 36
to go to school, 21-22
to locker security, 37
to make own decisions, 35
to privacy, 3, 20, 44
under Title IX, 47-48

SUITS
for invasion of privacy, 9
for malpractice, 4

SUPREME COURT
and abortions, 44-45
and privacy, 20
bi-lingual, 40
corporal punishment, 34
equal protection and, 23
expulsion and, 43
giving direction to law, 1-2
juvenile cases, 18
quantity of education guaranteed, 21
ruled children "persons", 21
school officials and, 8
supreme law of land, 6
Warren Court, 5

TEACHERS
hiring and firing of, 5
malpractice suits against, 4, 22
tenured, 4
verbal chastisement and, 29

TENURE
of counselors, 10
of teachers, 4

TITLE IX
and counselors, 47-48
grievance procedures under, 47
sex discrimination outlined, 24, 39-40
treatment of students under, 47-48

APPENDIX F

STUDENT GRIEVANCE FORM

A grievance is defined as a complaint in writing presented by a student to the school staff/authorities alleging one or more of the following:

A. That a rule is unfair; and/or
B. That a rule in practice discriminates against or between students; and/or
C. That school personnel used an unfair procedure in assessing a form of punishment against a student.

COMPLAINT

Date _____

Check one blank
Counselor, Level 1 _____
Asst. Principal, Level 2 _____
Principal, Level 3 _____

I, _____, hereby file a grievance complaint to
(Student's Name)

_____

My grievance is based on A. _____ B. _____ C. _____ above. (More than one blank may be checked.)

Specifically, my grievance is that _____
_____
_____

I hereby petition for a hearing on my grievance at the convenience of the school's personnel, but in no event later than five school days from the date of this petition.

_____
Student's Signature(s)

The student may be represented at the conference by an adult, but the student must be present to elaborate on his grievance at the given time and place for the conference. Failure to appear at the appointed time

(continued)

and place effectively waives the student's right to the conference provided by the school, unless extenuating circumstances make it impossible for the student to appear.

SCHOOL'S RECORD

Date Complaint Received _____ Date of Conference _____

Place of Conference _____ Time of Conference _____

Comments: _____

_____

_____

_____

Resolution: _____

_____

_____

Signature of school representative

See M. Chester Nolte, "Why You Need a Student Grievance Procedure," *AmSchBdJournal,* Aug. 1975, pp. 38-40.